रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 34] नई दिल्ली, अगस्त 18—अगस्त 24, 2019, शनिवार/श्रावण 27—भाद्र 2, 1941
No. 34] NEW DELHI, AUGUST 18—AUGUST 24, 2019, SATURDAY/ SRAVANA 27— BHADRA 2, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 9 अगस्त, 2019

का.आ. 1490.—केंद्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश सरकार, की अधिसूचना संख्या 1146/6-पीयू-14-18-70(448)/18 दिनांक 9 अगस्त 2018, के माध्यम से प्राप्ति सहमति से पुलिस थाना कोतवाली देवरिया, जिला देवरिया, उत्तर प्रदेश में भारतीय दंड संहिता, 1860 (1860 का अधिनियम संख्या 45) की धारा 188, 189, 353, 343, 370, 354-ऐ, 504, 506 तथा पोस्को अधिनियम, 2012 की धारा 7 एवं 8 और किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 की धारा 80 के अधीन दर्ज मामला अपराध संख्या 0724/18 और भारतीय दंड संहिता, 1860 (1860 का अधिनियम संख्या 45) की धारा 353 की अधीन दर्ज मामला अपराध संख्या 0707/18 का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है |

[फा. सं. 228/39/2018-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 9th August, 2019

S.O. 1490.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, issued vide Notification No. 1146/6-PU-14-18-70(448)/18 dated 9th August 2018, hereby extends the powers and jurisdiction of the Members of the Delhi Special Police Establishment in the whole of the State of Uttar Pradesh for investigation of Case Crime No.0724/18 under section 188, 189, 353, 343, 370, 354-A, 504, 506 of Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 7&8 POCSO Act, 2012 and section 80 Juvenile Justice (Care and Protection of Children) Act, 2015 and Case Crime No. 0707/18 under section 353 of Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Kotwali Deoria district Deoria Uttar Pradesh.

[F. No. 228/39/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 16 अगस्त, 2019

का.आ. 1491.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन जारी की गई भारत सरकार, कोयला मंत्रालय अधिसूचना संख्या का.आ. 1136, तारीख 02 अगस्त, 2018, के द्वारा जो भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 04 अगस्त, 2018 में प्रकाशित की गई थी, उस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 93.98 एकड़ (लगभग) अथवा 38.04 हेक्टेयर (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विहित उक्त भूमि के भाग में कोयला अभिप्राप्त है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में वर्णित 93.98 एकड़ (लगभग) अथवा 38.04 हेक्टेयर (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार का अर्जन करने के अपने आशय की सूचना देती है ।

टिप्पण 1 : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या आरईवी/05/2018, तारीख 03 दिसंबर, 2018 का निरीक्षण उपायुक्त, जिला - रामगढ़, झारखण्ड के कार्यालय या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता – 700001 के कार्यालय या महाप्रबंधक, बरका सयाल क्षेत्र, जिला रामगढ़, झारखंड के कार्यालय या महाप्रबंधक (भूमि और राजस्व), सेंट्रल कोलफील्ड्स लिमिटेड, दरभंगा हाउस, राँची – 834001, झारखंड या महाप्रबंधक (खोज प्रभाग), सेंट्रल माइन प्लानिंग एंड डिजाइन इंस्टीच्यूट लिमिटेड, गोंडवाना पैलेस, कांके रोड, राँची, झारखंड में किया जा सकता है।

टिप्पण 2: उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध हैं :-

"8. अर्जन के बाबत् आपत्तियां. – (1) कोई व्यक्ति, जो किसी भूमि में जिसकी बाबत् धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के जारी किए जाने के तीस दिनों के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा ।

स्पष्टीकरण.- इस धारा के अर्थान्तर्गत यह आपत्ति नहीं मानी जाएगी, कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएँ करना चाहता है और ऐसी संक्रियाएँ केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए ।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी आपत्तिकर्ता को स्वयं सुने जाने का या विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी अपत्तियों को सुनने के पश्चात और ऐसी अतिरिक्त जाँच, यदि कोई हो, करने के पश्चात जो वह आवश्यक समझता है, वह या तो धारा 7 की उप-धारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्रवाई के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा, जो प्रतिकर में हित का दावा करने को हकदार हो, यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं ''।

टिप्पण 3: केन्द्रीय सरकार द्वारा कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता -700001 को अधिसूचना संख्या का.आ. 2518, तारीख 27 मई, 1983, भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), में तारीख 11 जून, 1983 में प्रकाशित की गई थी, उक्त अधिनियम की धारा (3) के अधीन सक्षम प्राधिकारी नियुक्त किया है ।

अनुसूची

जीवनधारा विवृत परियोजना

जिला रामगढ़ (झारखंड)

(रेखांक संख्यांक आर.ई.वी./05/2018, तारीख 3 दिसम्बर, 2018)

सभी अधिकार :

क्र.सं.	ग्राम	थाना	थाना संख्या	जिला	क्षेत्र (एकड़ में)	क्षेत्र (हेक्टेयर में)	टिप्पणियां
1.	चोरधरा	पतरातु	55	रामगढ़	93.98	38.04	भाग
कुल :					93.98 एकड़ (लगभग)	38.04 हेक्टेयर (लगभग)	

1. ग्राम चोरधरा में अर्जित किए जाने वाले प्लाट संख्यांक : 07(भाग), 08(भाग), 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 और 24.

भू – अभिलेख के अनुसार अर्जित किए जाने वाले भूमि के विवरण का ब्यौरा नीचे सारणी में दिया गया है:-

सारणी

ग्राम	थाना संख्या	खाता संख्या	प्लॉट संख्या	प्रस्तावित अर्जन का क्षेत्र (एकड़ में)	भूमि का प्रकार	अभिलेखित भू-स्वामी का नाम
(1)	(2)	(3)	(4)	(5)	(6)	(7)
चोरधरा	55	14	7(भाग)	1.04	रैयती	भोखरा उरांव
चोरधरा	55	5	9	1.11	रैयती	चोपा मांझी
चोरधरा	55	18	10	1.71	रैयती	लोहरा मोदी (उरांव)
चोरधरा	55		11	0.77	रैयती	लोहरा मोदी (उरांव)
चोरधरा	55	19	12	1.15	रैयती	मगनु मांझी

चोरधरा	55	5	13	1.43	रैयती	चोपा मांझी
चोरधरा	55	18	14	0.76	रैयती	लोहरा मोदी (उरांव)
चोरधरा	55		15	1.05	रैयती	लोहरा मोदी (उरांव)
चोरधरा	55	14	16	1.08	रैयती	भोखरा उरांव
चोरधरा	55	6	17	1.71	रैयती	डेलवा उरांव
चोरधरा	55	18	18	0.53	रैयती	लोहरा मोदी (उरांव)
चोरधरा	55	5	19	3.02	रैयती	चोपा मांझी
चोरधरा	55	6	22	0.14	रैयती	डेलवा उरांव
चोरधरा	55		23	0.56	रैयती	डेलवा उरांव
चोरधरा	55	26	24	23.40	गैर-मजरुवा (जंगल झाड़ी) जीएम (जेजे)	सरकारी भूमि
चोरधरा	55		21	26.50	गैर-मजरुवा (जंगल झाड़ी) जीएम (जेजे)	सरकारी भूमि
चोरधरा	55		8 (भाग)	28.02	गैर-मजरुवा (जंगल झाड़ी) जीएम (जेजे)	सरकारी भूमि
कुल :			टप्लॉ 17 संख्याक	एकड़ 93.98 (लगभग)		

सीमा –वर्णन :

क-ख-ग-घ-ड. : रेखा, ग्राम चोरधरा के बिन्दु 'क' से आरंभ होती है और बिन्दु 'ख','ग','घ' और 'ड.' से गुजरते हुए उसी चोरधरा ग्राम में आरंभिक बिन्दु 'क' पर मिलती है ।

[फा. सं. 43015/6/2018-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 16th August, 2019

S.O. 1491.—Whereas by the notification of the Government of the India in the Ministry of Coal, number S.O. 1136, dated the 2nd August,2018, issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 4th August, 2018, the Central Government gave notice of its intention to prospect for coal in 93.98 acres (approximately) or 38.04 hectares (approximately) of the land in the locality specified in the schedule annexed to that notification;

And whereas, the Central Government is satisfied that coal is obtainable in a part of the said lands prescribed in the schedule appended to this notification;

Now, therefore, in exercise of powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 93.98 acres (approximately) or 38.04 hectares (approximately) and all rights in or over the said lands as described in the Schedule appended hereto;

Note 1: The plan bearing number Rev/05/2018, dated the 3rd December, 2018, the area covered by this notification may be inspected in the office of the Deputy Commissioner, District Ramgarh, Jharkhand or at the office of the Coal Controller, 1, Council House Street, Kolkata -700 001 or at the office of the General Manager, Barka Sayal Area, District Ramgarh, Jharkhand or General Manager (Land and Revenue), Central Coalfields Limited, Darbhanga, House, Ranchi – 834001, Jharkhand or General Manager (Exploration Division), Central Mine Planning and Design Institute Limited, Gondwana Palace, Kanke Road, Ranchi, Jharkhand.

Note 2: Attention is hereby invited to the provisions of section 8 of the said Act which provides as follows:-

"8. Objection to Acquisition.- (1) Any person interested in any land in respect of which a notification under section 7 has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation,- It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and that such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either makes a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act".

Note 3: The Coal Controller, 1, Council House Street, Kolkata-700 001 has been appointed by the Central Government as the competent authority under section 3 of the said Act, vide notification number S.O. 2518, dated the 27th May,1983 published in part II, section 3, sub-section (ii) of the Gazette of India, dated the 11th June, 1983.

SCHEDULE

Jeewandhara Opencast Project

District- Ramgarh (Jharkhand)

(Plan bearing number Rev/05/2018, dated the 3rd December, 2018)

All Rights:

Sl.No.	Village	Thana	Thana number	District	Area (in acres)	Area (in hectares)	Remarks
1.	Chordhara	Patratu	55	Ramgarh	93.98	38.04	Part
Total :					93.98 acres (approximately)	38.04 hectares (approximately)	

1. Plot numbers to be acquired in village Chordhara: 07 (P), 08 (P), 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 24.

Details of land to be acquired with land records is given in the table below: -

Table

Village	Thana No.	Khata No.	Plot No.	Intention to acquire the area (in acres)	Class of land	Name of recorded Tenant
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Chordhara	55	14	7(P)	1.04	Tenancy	Bhokhra oraon
Chordhara	55	5	9	1.11	Tenancy	Chopa Manjhi
Chordhara	55	18	10	1.71	Tenancy	Lohra Modi (oraon)

Chordhara	55		11	0.77	Tenancy	Lohra Modi (oraon)
Chordhara	55	19	12	1.15	Tenancy	Magnu Manjhi
Chordhara	55	05	13	1.43	Tenancy	Chopa Manjhi
Chordhara	55	18	14	0.76	Tenancy	Lohra Modi (oraon)
Chordhara	55		15	1.05	Tenancy	Lohra Modi (oraon)
Chordhara	55	14	16	1.08	Tenancy	Bhokhra oraon
Chordhara	55	6	17	1.71	Tenancy	Delwa oraon
Chordhara	55	18	18	0.53	Tenancy	Lohra Modi (oraon)
Chordhara	55	5	19	3.02	Tenancy	Chopa Manjhi
Chordhara	55	6	22	0.14	Tenancy	Delwa oraon
Chordhara	55		23	0.56	Tenancy	Delwa oraon
Chordhara	55	26	24	23.40	Gair- Mouzurwa (Jungle Jhari) GM(JJ)	Govt. Land
Chordhara	55		21	26.50	Gair- Mouzurwa (Jungle Jhari) GM(JJ)	Govt. Land
Chordhara	55		8(P)	28.02	Gair- Mouzurwa (Jungle Jhari) GM(JJ)	Govt. Land
Total :			17 no. of plots	93.98 acres (approximately)		

Boundary Description:

A-B-C-D-E	-	Line starts from point 'A' in village Chordhara and passes through points 'B', 'C', 'D', and 'E' and meets at starting point 'A' in the same village Cordhara.

[F. NO. 43015/6/2018-LA & IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 6 अगस्त, 2019

का.आ. 1492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 131/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को
06.08.2019 को प्राप्त हुआ था।

[सं. एल–12011/69/2007–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th August, 2019

S.O. 1492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 06.08.2019.

[No. L-12011/69/2007-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 131/2007

I Party

The General Secretary,
Dharwad District Bank
Empls. Asson.,
No. 9, Corporation Building,
Broadway,
HUBLI – 580020.

II Party

The Assistant General Manager,
Syndicate Bank
Personal Branch, Head Office,
Manipal (Karnataka) - 576104.

Appearance

Advocate for I Party : Mr. M Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12011/69/2007-IR(B-II) dated 06.09.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the punishment of dismissal imposed on Shri H.S. Chandrasekhar Pandit by the management of Syndicate Bank is legal and justified? If not, to what relief the workman is entitled?"

1. The cause of the workman Sh. H.S. Chandrasekhar Pandit ex-employee of the 2nd Party now dismissed from service is espoused by the Dharwad District Bank Employees Association.

2. The undisputed fact is, the 1st Party workman joined the 2nd Party Management as Clerk on 18.10.1976 and was working at Hindpur, Basarikatte Main Branch, Shivamogga, and Divisional Office. He was issued Charge Sheet dated 28.12.1990 on the allegation of gross misconduct under Section 19.5(j) of the Bipartite Settlement. The allegation was, he mis-utilised Housing Loan and did not construct House beyond Foundation, and the certificates produced by him from the Engineers are not genuine. He requested the 2nd Party to grant time to complete the construction of the house which was not responded. He sought for permission to sell the property and clear the loan amount. In the mean time the 2nd Party proceeded to appoint Enquiry Officer to conduct Enquiry proceedings. On completion of enquiry the Enquiry Officer submitted his report holding him guilty of charges. The Disciplinary Authority accepted the enquiry report and imposed the punishment order.

The 1st Party workman contends that, during the enquiry he was not given opportunity to defend the charges. He had given statement before the Enquiry Officer that he could not complete the construction of the house beyond the plinth level since, the license given for construction has lapsed he requested 3 months' time to complete the building. The said request was not considered and he was dismissed from service. The enquiry report is biased and perverse and the same is accepted by the Disciplinary Authority in a mechanical manner, punishment of dismissal imposed is without considering the fact that irregularities done were at the instance of the Officers and he was innocent. They have not considered his

past meritorious service. He was neither allowed to construct the House or to sell the property to clear the loan. The punishment of dismissal imposed on him is too harsh and disproportionate to the allegations. Subsequent to his dismissal the House property was taken over by the Bank and they have not sent any notice for deposing the house property.

3. The 2nd Party countered the claim allegations and maintained that he did not submit his remarks to the enquiry report. The Disciplinary Authority afforded opportunity of personal hearing on 28.11.1991. Wherein, he accepted the forgery committed by him pleading guilty and requested for lenient view. Having regard to the seriousness of the charges proved in the enquiry the punishment of dismissal vide proceeding dated 18.02.1992 was ordered. He preferred appeal against the Disciplinary Authority. The Appellate Authority gave him Personal Hearing on 24.03.1992, wherein he interalia submitted that he was compelled to mis-utilise the proceeding of Housing Loan due to family problem etc.,. The Appellate Authority having not found any mitigating circumstance made out by the 1st Party to disagree with the Disciplinary Authority dismissed the appeal. The punishment order is proportionate to the proved charges.

4. On the rival stands taken by both parties regarding fairness of Domestic Enquiry, a Preliminary Issue was framed and was adjudicated holding that "*the Domestic Enquiry conducted by the 2nd Party against the 1st Party is not fair and proper*". Thereafter, 2nd Party examined one witness to substantiate the charges against the workman no rebuttal evidence is adduced by the 1st Party.

Both have submitted argument.

5. The gist of the allegation as said in the charge sheet dated 28.12.1990 was,

That he availed Housing Loans while working at Basarikatte branch in 3 stages, during the period 1983-1987 for the ostensible purpose of purchasing of House site and constructing a Building therein at Hindupur under Employees Housing Loan Scheme of 2nd Party Bank. In respect of the 1st stage Housing Loan, the amounts released for construction purpose was not utilised for the said purpose. The progress reports of the construction of the House purported to have been issued by Sh. J Laxman Rao, licensed Building Contractor of Hindupur (on the basis of which he got released of the Loan amounts) are not genuine.

The letter dated 01.06.1985 purported to have been signed by the Manager Hindupur Branch, inspected the construction site and the construction of the Building is in progress, the amount of Rs. 45,000/- loan amount released is fully utilised, is not genuine. Hindupur Branch never addressed said letter to Basarikatte Branch.

In respect of the 2nd stage Housing Loan, the amount released towards the Housing Loan is not utilised for the said purpose but used for other purposes.

ADV. 84 (property inspection report) dated 02.09.1985, purported to have been signed by the Branch Manager of Hindupur, certifying that he has inspected the property and its market value at that time was Rs. 1.25 Lakh, is not genuine. As the Manger of the Hindupur Branch neither conducted inspection not sent ADV. 84 to Basarikatte Branch. The certificates issued by Sh. G.R. Mohan Rao, Civil Engineer / Contractor, Hindupur, certifying that he has visited the house under construction; amount spent was around Rs. 1,00,000/- requires Rs.2,75,000/- for pending work is also not genuine.

In respect of the 3rd stage Housing Loan, the amount released for the purpose is not utilised for the said purpose and used for some other purpose. ADV. 84 dated 11.02.1987 and the valuation report (ADV. 84) dated 11.02.1987 said to have been issued by Sh. G.R. Mohan Rao, stating that the value of the property was Rs. 1.50 lakhs is not genuine. But the value of the construction was Rs. 1.10 lakhs.

He furnished false / forged letters, for the purpose of availing Housing Loans and thereby mis-utilised the funds released by the Bank through his Housing Loan Accounts.

The above acts of the 1st Party is against the interest of the 2nd Party Bank, and mis-utilization of the Scheme meant for the welfare of the 2nd Party Bank Employees.

6. To substantiate the charge, the 2nd Party examined the present Manager of Basarikatte Branch, of the 2nd Party (where the 1st Party workman lastly worked after the preliminary issue went against them). He testified to the effect that the 1st Party workman applied for the Housing Loan and Rs. 75,000/- was sanctioned. The Said amount was paid in 2 stages, at the 1st stage Rs. 61,000/- was released and Rs. 14,000/- was released on 25.10.1985. Later, the Bank found that the amount released for the 1st Party was not utilised for construction of the house.

During the cross examination of the witness, he deposed that the Loan was released at the 1st stage in the form of DD in the name of the Owner of the House site. In the 2nd stage the amount was released to his SB A/c. As per rules, the

Manager before releasing the loan amount has to visit the spot. In the present case, after personal inspection by the Branch Manager, Loan amount was released.

The witness does not claim any personal knowledge of the Loan transaction or having seen the property in question, the witness is also ignorant as to whether any disciplinary action is taken against the then Branch Manager of Basarikatte Branch. He is also not aware as to whether the 1st Party has remitted the entire loan amount.

There is no rebuttal evidence by the 1st Party workman.

7. Above piece of evidence is insufficient to corroborate the charge allegations, at the least on preponderance of probabilities. In respect of the misconduct alleged to have committed between 1985-1987, the present Branch Manager of Basarikatte Branch could not have led better evidence than what came to his Knowledge from records, naturally he cannot have any personal knowledge of the Loan transaction or the misconduct attributed against the 1st Party workman. What can be inferred from his evidence is the release of the Loan amount in 2 stages, in the 1st stage it is released in favour of the Owner of the site; in the 2nd stage Rs. 14,000/- is released to the SB A/c of the 1st Party.

8. Since, 1st Party opted not to adduce rebuttal evidence, it shall be presumed that he is the beneficiary of the Loan amount and did not use the loan of Rs.14,000/- so sanctioned for the construction purpose. No tangible evidence is produced by the 2nd Party, as to whether the Loan instalments are being cleared by the 1st Party workman or whether any positive steps was taken to recover the loan amount by auctioning the property.

9. Sh. RU for the 2nd Party, submits that the workman has clearly admitted the allegations made against him at Page 5 Para 12 of the claim statement. He had claimed that, *there was clear permission of the Branch Manager of the Basarikatte Branch* and further stated that *"… How the Manager, who has released the Loan amount and permitted the 1st Party to use the amounts is not responsible for the misconduct alleged against the 1st Party. While the 2nd party Bank has not proceeded against the Manager is not answered by the Enquiry Officer and by the Disciplinary Authority of the 2nd Party Bank...."* Learned counsel further submits vide order sheet dated 21.02.2017 by consent of both Parties 2 Exhibits were marked as Ex M-1 and M-2.

Ex M-1 is the appeal against the punishment order and Ex M-2 is the minutes of hearing of appeal dated 24.03.1982. At Ex M-1, he has stated to the effect that after the construction reached plinth level, he was compelled to utilise the proceeds of House Loan for the marriage of his Sister who was solely dependent on him. Further at Para 4 he states,

"*I once again admit before you sir, that I have not utilised the HL proceeds for construction/ completion of house. The above acts are committed by me during my week movements I have small two children of school going age...*"

At Ex M-2 the submission of the 1st Party workman made before the Appellate Authority is recorded thus,

"*I was compelled to mis-utilise the proceeds of Housing Loan amount due to family difficulties. But, I had no intention to dupe the Bank. I had done it to bear the expenses of marriage of my sister who was wholly dependent on me. I have already confessed my guilt. I repent that I should not have committed the act; the prevailed circumstances forced me to do it*".

10. The charge of gross misconduct within the meaning of Clause 19.5 (J) of Bipartite settlement and also the gross misconduct doing acts prejudicial to the interest of the Bank, could not have proved without examining the persons having personal information of the misconduct like the then Bank Manager of the Hindupur, the Licensed Contractor who has issued the certificate and the then Branch Manager of Basarikatte Branch. Now what is established from the evidence of Present Manager of the Branch is that loan was released in 2 instalments, the 1st instalment of Rs. 61,000/- was in favour of the Owner of the Site. If the Owner of the Site received the amount that has nothing to do with the construction of the Building, the next instalment of Rs. 14,000/- was received by the 1st Party is not utilised for construction purpose. For the misconduct of not utilising Rs. 14,000/- which was released for construction purpose, the punishment of dismissal from service is shockingly disproportionate, too harsh and severe. There is no financial implication on the 2nd Party from the misconduct which is proved as above. They had taken over the site to their custody and probably recovered the Loan sanctioned by disposing of the site through auction sale.

11. For the discussion supra, I hold that the punishment order of the Disciplinary Authority dated 18.02.1992, requires to be interfered in exercise of jurisdiction under Section 11-A of the Industrial Dispute Act. The 1st Party workman has attained superannuation long back. In the circumstance, the relief that could be moulded in his favour is monetary compensation proportionate to the loss suffered by him on his dismissal of service w.e.f 18.02.1992.

12. Having Holistic view of the matter, I hold monetary compensation at the rate of 60% (Sixty Percentage) of his back wages from the date of his dismissal from service till the date he attained superannuation would serve the ends of justice being met.

AWARD

The reference is accepted.

The 2nd Party is directed to pay monetary compensation to the 1st Party workman Sh. H.S. Chandrasekhar at the at the rate of 60%(Sixty Percent) of his back wages from the date of his dismissal from service till the date he attained superannuation within 6 weeks from the date of publication of the Award in the official gazette failing which the amount shall carry future interest at the of 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 26th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 8 अगस्त, 2019

का.आ. 1493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 64/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को
08.08.2019 को प्राप्त हुआ था।

[सं. एल–12012/18/2006–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th August, 2019

S.O. 1493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 08.08.2019.

[No. L-12012/18/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/64/2006 Date: 08.07.2019

Party No.1 : The Zonal Manager,
Punjab & Sind Bank,
Worli Zonal Office,
Mumbai – 400025.

Versus

Party No.2 : Shri Michel S/o Xaviar Francies,
R/o Cristan Kabristan, Near Central Excise Office,
Civil Lines, Sadar, Nagpur.

AWARD
(Dated: 08th July, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between

the employers, in relation to the management of Punjab & Sind Bank and their workman, Shri Michel S/o Xaviar Francies, for adjudication, as per letter **No.L-12012/18/2006-IR (B-II) dated 25.06.2006,** with the following schedule:-

> **"whether the action of the management of the Punjab & Sindh Bank through its Sr.Manager, Branch Nagpur and Zonal Manager, Mumbai in terminating the services of the disputant workman viz Shri Michel S/o Sh. Xaviar Francis W.e.f. 08/01/2005 is legal & justified and whether, the workman is also entitled for reinstatement in service with full back wages or not? If not what relief the workman is entitled to?"**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Michel Xavier Francies," ("the Petitioner" in short) filed the statement of claim and the management of Punjab & Sind Bank, ("Party No. 1" in short) filed their written statement.

3. The case of the petitioner as presented in the statement of claim is that, he was working in as a peon in party no.1 bank continuously from 3-9-97 on temporary basis/daily wages of Rs.30/-per day which was announced as Rs 75/- per day till date of his termination i.e. 8-1-2005. According to him he work sincerely and honestly and completed 240day's of services in each calendar year. He passed 10th standard and he was serving party no.1 bank since last 7 years. According to him in addition to the work of peon he used to perform the work of sorting of cash, stitching packets, pasting of slips, making bundles, collecting cheques for CBDT stitching of vouchers, maintenance of ledgers and registers/record vouchers of the branches and other sub staff duties viz-a-viz serving water and tea to customer and staff of the Bank, cleaning work, filling water etc. It is noteworthy that there is only one post of peon. According to workman he used to accompany other staff of the bank for depositing cash to the R.B.I. According to him he was working as a temporary staff of the party no.1

4. According to petitioner party no.1 bank wants to have absorbed party no.2 in the said post of peon and he requested branch manager to absorb him as a permanent peon. He also forwarded his representation to the Zonal Manager, Mumbai with a recommendation for regularization of petitioner. Higher officer at Mumbai have every time threatened to him for departmental action but party no.1 or higher officer did not pay heed in respect of the absorption / permanency of labour. According to him this act of party no.1 amounts to an unfair labour practice.

5. According to petitioner he was illegally terminated from the service without assigning any reason and without paying compensation under section 25 (F) & (G) of Industrial Disputes Act so he pray that present reference is answered in favour of petitioner and declared unfair labour practice and illegal termination he also pray that he is reinstate in service with continuity and with full back wages. He also pray that tribunal may grant any further relief as deems fit and proper

6. On behalf of management written statement filed by the party no.1 by asserting that, "this party No. 1. The engagement of party No. 2 with the party No.1 was purely ad-hoc and casual and the party No. 2 was working for about 2 to 4 hours for cleaning, sweeping, filling water and other misc work. The party No. 2 was accordingly paid wages on voucher and there was master and servant relationship in between the party No. 1 and 2. There was no appointment of the party No. 2 nor there was any termination of the services.

7. According to party No. 1, petitioner raised a dispute, which is not in existence for adjudication is nothing but to secure a back door entry in the services of the party No. 1, he was engaging for ad hoc a casual work for completing urgent work made by the branch manager, engagement of petitioner was not in accordance with the rules and recruitment and procedure and applicant/petitioner was paid his charges on daily basis.

8. Party No. 1 denied all material facts asserted by petitioner in Statement Of Claim and also asserted that petitioner did not completed 240 days of service in each calendar year. They also denied that he was entitled for absorption as a peon. According to him the bank has its own procedure of making appointments based on settlements and the bank cannot bye-pass the procedure of making appointment or for regularization of the services of the party No.1. According to party No.1 "As there is no termination of the services of the party No. 1, there is no question of paying any retrenchment compensation of exhibiting any seniority list by the petitioner. The provisions of the Industrial Disputes Act are not attracted in case of the party No. 1. The party No. 1 was a part time sweeper and the appointment of the party No. 1 was not made in accordance with the rules of banks."

9. Party No. 1 submits that as per the settlement, which are applicable to the temporary peons, the cases of such peons for regularisation can be considered by the bank in case they apply to bank in response to an advertisement. So they pray that there are no merits in the dispute raised by the party No. 1 and the same is therefore liable to be answered in negative.

10. **Point of determination:**

i. Whether petitioner is peon in concerned bank?

ii. Whether he is entitled for regularisation?

iii. Whether the action of the Party No. 1 is legal & justified?

Reason of determination:

11. On behalf of the petitioner, it was argued that, petitioner was working as a peon in party No.1 bank and he is completed more that 240 days in a one calendar year so, he entitled all benefits arising out of permanency, he refers some judgment of other Tribunal and Hon'ble High Court. This argument is denied by management by asserting that petitioner did not completed 240 days but he was employed by party No.1 as fetching water and cleaning purpose. Now I want to see evidence.

12. On behalf of petitioner he examined himself by supporting their pleading which is mentioned in their statement of claim but in his cross examination he admitted that he engaged by the bank on temporary basis on daily wages of Rs.30 per day. He also admitted that he worked on daily wages from initial engagement till date of his termination. He also admitted that exhibit voucher M1 to M33 is the vouchers under which he was paid wages. But he denied that he did not completed 240days in a calendar year and he worked as a part time worker. Now I want to see Management evidence.

13. On behalf of Party No.1, Senior Manager, Mr. Shankar was examined in support of his defence but he admitted that he was not working in the said bank at the time of petitioner employment i.e. he gave evidence on the basis of documents. He also admitted that petitioner was working during period from 3.9.97 to 8.1.2005 but according to him petitioner did not work regularly. He also accepts that he did not know signature of petitioner. It is uite possible because he did not work at the time when the petitioner was on employment. He also admitted that register were maintained for 10 to 12 years. According to him cash sorting, making bundles and pasting the seal are done by the peon. In this way this witness remained unrebuted in his cross examination.

14. On behalf of petitioner it was argued that even direction of Government, Hon'ble High Court and Supreme Court, party No. 1 did not absorb or gave permanent status of the petitioner, on the contrary against the rules party No.1 terminated service of petitioner without paying compensation or following the provisions 25-F and 25-G of Industrial Disputes Act. This argument was denied by the party No.1 by asserting that he was engaged as part time worker, not for permanent employment. According to him bank has its own recruitment rules which was not followed at the time of appointment of the petitioner.

15. On going the evidence of petitioner he admitted that there are rules and regulations for appointment of sub-staff he also admitted that he did not face any written test, oral test or medical test before his appointment. He also admitted that bank did not pay extra remuneration but he admitted that Branch Manager wrote a letter to the Zonal Manager for his regularisation but the Zonal Manager did not accept it. In this way he admitted that, Branch Manager was bonafide in doing efforts for regularisation or absorption of the petitioner. Now I want to see party No. 1 evidence.

16. On behalf of party No. 1, Mr. Shankar, MW1 asserted that, appointment of petitioner is ad-hoc or casual. He also admitted that before entering in RBI, Gate Pass was issued to the concerned person. He also admitted that, when cash sent to the RBI, one peon, one gun man, one cashier and one officer go to RBI. He also admitted that, document No. 27, a Xerox copy of letter sent by the Branch Manager to the Zonal Manager, in which, information of the petitioner was sent. Document Nos. 28 & 30 was reminder sent by the Branch Manager to the Zonal Manager. In this way, he remained unrebutted in his statement. Nothing is shown that, he was prejudice or ill motive towards the petitioner. On the other hand, his statement appears to be reliable.

17. On behalf of the petitioner, it was argued that, the practice of keeping employee temporary for years together and thereafter terminating their services, in order to deprive their valuable right of getting permanency. He also argued that, petitioner was terminated illegally without following the procedure laid down by the law. This argument was denied by the Party No.1 by asserting that, petitioner wants backdoor entry in bank services, although bank has their own rules and regulation and that cannot be bypassed. They relied on case law, BSNL Vs. Bhurumal CA No. 10957/2013 SC date of judgment 11.12.2013, in which following principles are laid down: (as a lineman on daily wages with Telephone Dept., and was not paid his wages for the period from October 2001 till April 2002. Respondent was not allowed to resume his duty which amounted to wrongful termination – Conciliation proceedings were not successful, the Conciliation Officer sent his failure report to the Central Govt. and on that basis Central Govt. made a reference to Tribunal – Whether the relief of reinstatement with full back wages was rightly granted by Tribunal – Held, it was clear from the reading of the judgment of SC that the ordinary principle of grant of reinstatement with full back wages, when the termination was found to be illegal was not applied mechanically in all cases – While that might be a position where services of a regular/permanent workman were terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc – However, when it came to the case of termination of a daily wage worker and where the termination was found illegal because of procedural defect, namely in violation of s.25-F of Act, SC was consistent in taking the view in such cases reinstatement with back wages was not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. By paying him the retrenchment compensation – Since such a workman/respondent was working on daily wage basis and even after he was reinstated, he had no right to seek

regularisation – Thus when respondent could not claim regularization and he had no right to continue even as a daily wage worker, no useful purpose was going to be served in reinstating such a workman and he could be given monetary compensation by the Court itself in as much as if he was terminated, again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay – In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose – Thus, ends of justice would be met by granting compensation in live of reinstatement – A.Umarani V. Registrar, Coop. Societies, 2004 Indlaw SC 606 and Secy.,State of Karnataka v. Umadevi, 2006 Indlaw SC 125, relied on – Appeal disposed of keywords: Labour & Industrial Law, Tribunal, Repairing, Telephone, Retrenchment, Reinstatement, Retrenchment Compensation, Conciliation.)

18. On behalf of the petitioner, it was argued that, petitioner has no other source of income and due to his illegal termination; his entire family is on verge of starvation. This fact was denied by the Party No. 1 advocate by asserting that, Tribunal has no power to protect illegal act. I want to see the evidence of the Party No. 1.

19. Sr. Manager, Mr. Shankar P. Paunikar admitted that, no retrenchment compensation was paid to the petitioner. He also admitted that, he worked from 1997 to 2005. So, demand of compensation on behalf of the petitioner appears to be illegal.

20. In case law--- Delhi Transport Corp. Vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhyog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper." These principles are also laid down by Hon'ble Supreme Court in case laws- Punjab Urban Planning & Development authority Vs. Mandip Singh (2016) 7 SCC-571, UPSRTC Vs. Gopal Shukla (2015) SCC 603, Sanjay Singh Vs. National Seed Corporation (2017) 13 SCC 269, V.D. Vegad Vs. State of Gujurat (2017) 2 SCC 508 and Angikr Oriental (Arbic) Higher Secondary School Vs. A. Harnoon (2017) 2 SCC 510.

21. Judging the present case in hand with the touch stone of the principles laid down in the above case law and going through various citations of the Hon'ble High Court as well as different Hon'ble CGITs, my humble opinion is that, petitioner fails to prove that, he was a appointed as regular or temporary peon or he worked for 240 days in a calendar year as a peon, but petitioner proved that, no retrenchment compensation was paid by the Party No. 1. It also appears that, he was not in regular employment. On the contrary, Party No. has their own rules and regulations regarding their recruitment and promotion of the subordinate staff. Hence, it is ordered:-

ORDER

The action of the management of the Punjab & Sindh Bank through its Sr. Manager, Branch Nagpur and Zonal Manager, Mumbai in terminating the services of the disputant workman viz Shri Michel S/o Sh. Xaviar Francis w.e.f. 08/01/2005 is legal & justified, but he is entitled for compensation of Rs. 2, 00,000/- (Rupees two lac only) instead of retrenchment compensation as well as other equitable relief. Management, Party No. 1 should comply the order within one month from the date of publication of this award in official gazette, failing which, petitioner is entitled to interest of 6% per annum from the date of dues amount. The petitioner is not entitled for any other relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2019

का.आ. 1494.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट (संदर्भ सं. 15 (सी)/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.08.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th August, 2019

S.O. 1494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15 (C) of 2015) of the Industrial Tribunal Court, Patna (Bihar) as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 08.08.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. 15 (C) of 2015

Between the management of (1) Branch Manager, Canara Bank, Buxar Branch, Dist.- Buxar, Bihar (2) Canara Bank through the General Manager, Appellate Authority Personal way Head Office, 140 M.G, Banglore and their workman Sri Krishna Kumar Mishra, S/O- Bishwanath Mishra, resident of village Dhebani, P.S- Brahmpur, Dist.- Buxar.

For the management : Sri Rajan Ghoshrave, Advocate

For the Workman : Sri B. Prasad, President of Bank Employees Federation, Bihar

Present : Vishweshwar Nath Mishra, Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dt. 17th July, 2019

1. The present case has been filed u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief for setting aside the order of the General Manager dated- 13.07.2009 / 28.07.2009 and the order of General Manager cum disciplinary authority dated- 29.07.2009 and the order of the appellate authority dated- 06.05.2010 and be pleased to direct the management (bank) to reinstate the workman to his post and position with all consequential benefits i.e all back wages, arrears of salary on account of revision of salary and arrears of Bipartite settlement / increment etc.

2. That the workman filed a writ application before the Hon'ble Patna High Court bearing CWJC No.- 4834 of 2011. The Hon'ble Court finally decided on 27.01.2015 with a direction given to the workman to raise the Industrial Dispute under Industrial Dispute Act as the alternative remedy is available to him. Matter was raised on 26.03.2015 by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice to the concern parties and held conciliation proceedings.

3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings. The attitude of the management, during conciliation proceeding was far from conciliatory and there was no scope of redressal of grievances either before the management or before the conciliation officer.

4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendement) Act, 2010.

5. Before the Reference Case No.- 03 (C) of 2016 this I.D.Case No.- 15 (C) of 2015 was filed by the workman Sri Krishna Kumar Mishra u/s-2A (1 &) of the I.D.Act (Amendment) 1947.

6. As per the case of the workman he raised Industrial Dispute before the Assistant Labour Commissioner (C), Patna vide application dt- 26.03.2015. The Assistant Labour Commissioner (C), Patna held conciliation proceeding. As a period of three months elapsed with no sign of any settlement, the workman filed this Industrial Dispute Case in this tribunal. In the mean time the matter was also referred by the Central Government (Ministry of Labour/Shram Mantralaya) vide Notification No.- 12012/75/2015-IR(B-II) dt- 15.02.2016. Further by order dt- 06.12.2018 as in both the I.D Case and Reference Case the parties were same and the matter for adjudication was also the same therefore, both the cases were made analogous. Later on a petition was filed by the workman on 14.03.2019 for segregating Reference Case No.- 03(C) of 2016 from the I.D.Case NO.- 15(C) of 2015 and for adopting the written statement, evidences as well as other materials available in the I.D.Case in the Reference Case. The petition was allowed by this tribunal on 14.03.2019 and the prayer of the workman was accepted by this tribunal.

7. In the instant case withdrawal petition has been filed on behalf of the workman on 20.05.2019 stating therein that in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and

confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and praying theirin to withdraw the instant I.D.Case.

8. Heard both the parties.

9. As the petitioner / workman himself wants to withdraw the I.D.Case, his prayer is hereby allowed and the I.D. Case is accordingly dispossed off as withdrawn and not maintainable in the light of the aforesaid judgement of the Hon'ble Patna High Court. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

Sd/-

17.07.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 8 अगस्त, 2019

का.आ. 1495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकत्ता पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 19/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.08.2019 को प्राप्त हुआ था।

[सं. एल–32011/1/2006–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th August, 2019

S.O. 1495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 08.08.2019.

[No. L-32011/1/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 19 of 2006

Parties: Employers in relation to the management of Kolkata Port Trust

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. M.K. Das, Industrial Relations Officer.
On behalf of the Workmen	:	Mr. K.K. Banerjee, Assistant General Secretary of National Union of Waterfront Workers (INTUC), Added Party.

Dated: 1st August, 2019 Industry: Port & Dock.

AWARD

By Order No.L-32011/1/2006-IR(B-II) dated 23.05.2006 and corrigendum of even number dated 04.07.2006 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust, Kolkata in non-regularising the services of 61 workmen (as per list attached as Annexure-I) engaged on temporary basis, on the permanent posts as mentioned against each name in the list, is legal and justified? If not, to what relief they are entitled for?"

Annexure – 1

List of temporary marine employees for REGULARISATION IN SERVICE (KOPT)

	Name	Designature	Date of apptt.	Source
1.	Sri Shyam Mallick	Topaz	03.09.1990	List of Dept.
2.	" Ramkrishna Balmiki	"	07-06-1991	"
3.	" Ashoke Kumar Seal	Steward	05-06-1990	"
4.	" Tapan Kr. Samanta	Bearer	19-05-1990	"
5.	" Sudhir Das	Cook	12-06-1989	"
6.	" Lalit Mohan	Seal Bearer	04-11-1989	"
7.	" Radha Charan Sarkar	Cook	16-07-1989	"
8.	" Swapan Kr. Das	Bearer	03-07-1989	"
9.	" Sudhir Ch. Seal	"	11-1991	"
10.	" Subash Majumder	"	17-07-1991	"
11.	" Sk. Sahajan	"	18-09-1991	"
12.	" Anil Kumar Routh	Bhandary	02-08-1990	"
13.	" Subal Ch. Mondal	"	21-02-1991	"
14.	" Naresh Ch. Seal	"	06-07-1991	"
15.	" Santosh Kr. Majumder	"	25-05-1991	"
16.	" Sudhangshu Kr. Mondal	"	30-08-1996	"
17.	" Nepal Ch. Seal	"	04-11-1991	"
18.	" Asit Bairagi	"	23-03-1998	Died-in-harness
19.	" Dhan Behari	Topaz	12-05-1998	"
20.	" Sanjay Kr. Barua	Bhandary	24-10-1997	"
21.	" Kamal Dhanuk	"	28-03-1998	"
22.	" Sudip Iswar	Topaz	24-04-1998	"
23.	" Joydev Pandit	Bhandary	24-10-1997	"
24.	" Rajesh Passi	Topaz	15-10-1997	"
25.	" Faiz Ahmed	Bhandary	03-08-1997	"
26.	" Ramlala Das	"	19-11-1997	"
27.	" Ramashray Ram	"	27-11-1997	"
28.	" Indrajit Dey	"	"	"
29.	" Arjun Das	"	13-11-1997	"
30.	" Raghunath Samanta	"	08-11-1998	"
31.	" Manoj Sahani	"	20-11-1997	"
32.	" Goutam Mistry	"	19-11-1997	"
33.	" Oli Akbar Khan	Topaz	30-12-1997	"
34.	" Tutu Das	Bhandary	25-11-1997 "	
35.	" Dharmender Shaw	"	07-08-1997	"
36.	" Tusar Kanti Jhali	"	01-08-1997	"

37.	" Md. Mujahid	"	28-07-1997	"
38.	" Aloke Chakraborty	"	06-08-1997	"
39.	" Ajoy Prasad	"	28-01-1998	"
40.	" Ram Badan Bin	"	14-11-1997	"
41.	" Babloo Singh	"	30-08-1997	"
42.	" Abdul Mannan Khan	"	03-12-1997	"
43.	" Uttam Barua	"	97	"
44.	" Md. Hasim	"	25-11-1997	"
45.	" Dilip Mondal	"	97	"
46.	" Anand Dosad	"	97	"
47.	" Tapan Kr. Biswas	"	03-08-1997	"
48.	" Md. Mustaque	"	18-12-1997	"
49.	" Bahauddin Mondal	"	97	"
50.	" Mustaque Khan	"	97	"
51.	" Lal Babu Rai	"	97	"
52.	" Tapas Roy	"	97	"
53.	" Sk. Ali Imtiaz	Topaz	12.08.1997	"
54.	" Basudeb Seal	Bhandary	10.08.1997	"
55.	" Duku	"	97	"
56.	" Sahabuddin	"	97	"
57.	" Narayan Das	"	97	"
58.	" Parimal Ch. Das	"	97	"
59.	" Rajesh Singh	"	10.12.1997	"
60.	" Tarak Dutta	"	97	"
61.	" Pradip Naskar	Missing		

2. After issue of usual notices to the parties to the reference, the National Union of Waterfront Workmen (I) filed statement of claim pleading therein that the concerned workmen belong to the Director, Marine Department and serving the Trustees in the capacity of Bhandari, Cook, Topaz, Bearer, Steward etc. In the year 1989 some permanent operational posts of different categories fell vacant due to the retirement/death of permanent employees holding such posts, but with an ill-motive the management of Kolkata Port Trust planned not to fill up those posts, instead a good number of persons were picked up from the Employment Exchange and listed dying in harness candidates for carrying out such works which are perennial in nature. They are performing the same work which the permanent employees perform. They are being paid consolidated overtime allowance, meal allowance, holiday allowance, bonus etc. like other permanent employees engaged in similar job in the same vessel. Salaries are also paid through ECS. Thus these persons are due for regularization/permanent adjustment in service, but the management of Kolkata Port Trust with an ill-motive of depriving these employees from getting permanent status, forced these persons to avail artificial 'put off' of one day on completion of every 41 days of service. But this 'put-off' was actually false and artificial. In most of the case, these workmen remained on duties in the vessels engaged in dredging or other similar operational works. It was highly expensive affair for the management, if these workmen were brought back to shore and landed there on completion of 41 days of duties, therefore, they were allowed to work in vessel as usual. When the vessel arrived at shore, those 'put off' days marked against their attendance and also in all relevant records. Their attendance were kept in the same register in which the attendance of permanent employees were marked. It is further stated that in a trikary manner some 12 temporary employees were temporarily transferred to Chief Medical Officer's Department and they were made permanent there and thereafter they were again transferred to the Marine Department as permanent staff. When these irregularities were brought to the notice of the concerned department, the Director, Marine Department intimated to the General Secretary of the NUWW(I) on 07.08.2002 that necessary proposal for regularization of such temporary employees had been placed before the appropriate authority for approval, but it never took place. Therefore, the union approached the Assistant Labour Commissioner (Central), Kolkata and on failure of conciliation, the matter has been referred to this Tribunal for adjudication.

3. Management of Kolkata Port Trust filed its written statement stating that Kolkata Port Trust has a number of departments under the Kolkata Dock System and one of the departments is Marine Department. In order to facilitate activities it had become necessary for the Marine Department to engage persons against leave vacancy at a very short

time. Initially these persons were engaged from outside, sponsored through Employment Exchange. However, such practice was objected by the union and it was claimed by the union that men who worked in the past should be preferred against short term vacancy. Therefore, ex-employees list was accordingly drawn up with persons who had worked in the Marine Department in the post and who had been sponsored by the Employment Exchange. In the year 1972 separate departmental and sectional list were prepared of persons who had been engaged against casual vacancies. From these list not only short-term engagement, but also regular appointments were made. After absorption of most of the ex-employees of the list of 1972, similar lists were again drawn up in the second time in 1982. In 1995 a committee was constituted for the purpose of enlisting ex-employees. The committee enlisted 66 candidates for the post of Lascars, 25 candidates for the post of Bhandaries and 12 candidates for the post Masalchi and 5 candidates for the post of Topaz. Along with enlistment of ex-employees, it was also decided to fill up temporary posts of Bhandary, Topaz and Masalchi by die-in-harness candidates subject to fulfillment of certain criteria. In course of time a pool was also formed by die-in-harness candidates for engagement against short-term vacancies and also adjustment against permanent vacancies. The Kolkata Port Trust having a large number of work force in different departments, sometimes it was experienced that in one department a number of employees remained idle for want of adequate job whereas in other department there were shortage in operational areas. Therefore, identifying such idle work force, 29 permanent employees were adjusted against various operational posts in the Marine Department. The action of the management was disputed by the union and an industrial dispute was raised by the union demanding confirmation of 61 persons who were engaged for specified period and on completion of the said period, they were put off duty under the provisions of Kolkata Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1985 (hereinafter called as the Regulation of 1985 for convenience). It is further submitted that out of 61 persons under reference, one person, Shri Pradip Naskar is missing. Therefore, the schedule of reference as framed is not maintainable. It is also submitted by the management that the cause of 61 persons has not been properly sponsored by the union, therefore, the reference is also not maintainable. The management has also pleaded that in the Marine Department posts have been filled up on regular basis from time to time as per operational requirement from various sources viz., listed ex-employees, listed die-in-harness candidates, listed trade apprentices and surplus personnel. Prior to regularization of listed ex-employees and listed die-in-harness candidates, they were given contractual employment against short-term vacancies and during such engagement they were paid Dearness Allowance in addition to pay and Consolidated Overtime Allowance as per Award of the Tribunal in Reference No. 17 of 1977 and Reference 40 of 19978. The allegations of the union regarding posting of 12 listed employees in the Medical Department and their subsequent transfer to Marine Department are not only baseless but also malicious. The contractual engagement of listed ex-employees and die-in-harness candidates are distinctly different from the term appointment as used in Regulation 6 of the Regulation of 1985. As per Regulation of 1985 an employee is eligible for confirmation only against a permanent post on completion of prescribed period of probation and since none of the concerned employees has been appointed against permanent post, demand for their confirmation does not have merit.

4. The union filed its rejoinder pleading therein that the term ex-employees is vague and incorrect. Actually these ex-employees were appointed against permanent vacancies and did the same work what the other permanent employees did, but the management of Kolkata Port Trust adopting unfair labour practice kept them temporary till now. The management of Kolkata Port Trust invented a unique system of giving them one day put off after completion of 41 days of service only to create an artificial 'break in service' so that these employees remain deprived for ever from having status and privileges of permanent workmen.

5. On behalf of the union WW-01, Shri Sanjay Kumar Barua, WW-02, Shri Asit Bairagi, WW-03, Shri Sudhir Chandra Seal, WW-04, Shri Shyamapada Bose and WW-05 Shri Samar Mukhopadhyay were examined. However, WW-05, Shri Samar Mukhopadhyay was not produced for cross-examination. MW-01, Shri Prabhat Kumar Chattopadhyay was examined on behalf of the management.

6. I have heard the authorized representative of the parties.

7. The stand taken by the union is that the concerned workmen are working in Marine Department of the Kolkata Port Trust in different capacity for the last several years, but the management is not inclined to regularize their services and one day put off after serving for forty-one days has been deliberately given to them to avoid regularization of service. Thus it is pleaded that put off for one day on completion of forty-one days service is false and artificial. In fact, the concerned workmen worked on that day also. It is also pleaded that they are working against permanent post doing all the work of perennial nature.

8. According to the management the nature of employment of the workmen under reference is contractual. They are not working against any permanent post. Hence they are not entitled for regularization of their services. The management has also at the very outset taken objections to the maintainability of the reference on the ground that out of 61 workmen under reference, Shri Pradip Naskar is missing, therefore, the reference as framed is not maintainable. The management has also taken the issue of espousal of dispute of the workmen concerned by the union.

9. Before coming to the merit of the case of the workmen concerned, it will be proper to deal with the issue of maintainability taken by the management. Admittedly, schedule to the order of reference covers 61 workmen working in Marine Department of Kolkata Port Trust. The union has not denied the fact that Shri Pradip Naskar missing. The union has also neither adduced any evidence to negate the objection of the management, nor has produced Shri Pradip Naskar in the Tribunal to show that he is not missing he is still and working in Kolkata Port Trust. However, merely because a person is missing the case of rest of the workmen cannot be said to be not maintainable. It is a case of regularization of 61 workers and if merit is found in favour of workmen, then services of only those workmen can be regularized who are presently working with the Kolkata Port Trust. Hence absence of one of the workmen has nothing to do with the maintainability of the reference.

10. A perusal of record shows that initially National Union of Waterfront Workmen (INTUC) was party to the reference. However, a corrigendum was issued by the Government of India and in place of National Union of Waterfront Workmen (INTUC), National Union of Waterfront Workmen (I) was made party to the reference and accordingly the Tribunal also amended the original reference deleting the name of National Union of Waterfront Workmen (INTUC) and adding National Union of Waterfront Workmen (I) as a party. During pendency of reference National Union of Waterfront Workers (I) was impleaded by the order of the Tribunal. It was claimed that the workmen under reference had shifted to the newly added union and therefore, the newly added union has right to continue with reference for the cause of the workmen concerned. Contrary to it the management has challenged proper espousal of cause claiming that the total strength of Class-III and Class-IV employees as on 31st March, 2010 in Kolkata Port Trust was 8275 whereas newly added union had only membership of 1463 employees. The management has also prayed for disposal of issue of espousal by the newly added union as preliminary issue. At the time of hearing of the issue of espousal, the authorized representative of the added union filed copy of membership register whereupon the Tribunal directed him to keep original with him and to file the same at the time of hearing of reference when the management raises any question of competency of the union to be a party in the matter. The copy of membership register is on record. This copy is not disputed by the management. However, from the perusal of the list of members it appears that out of 61 workmen under reference, 9 workmen are not members of added union. The management witness Shri Prabhat Kumar Chattopadhyay has also stated that 8 workmen are not reporting for duty for long time. Hence there is no doubt regarding correctness of copy of the membership register of the added union. Therefore, the added union has right to pursue the reference for the cause of the workmen concerned.

11. Even if for the sake of argument it is assumed that the workman concerned are not members of the union, the question arises whether in absence of espousal of cause by any union, this reference is maintainable.

12. In **The Bombay Union of Journalists** v. **The Hindu, Bombay**, 1961-II-LLJ 436 the Hon'ble Supreme Court has held that

> *"In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference the dispute was taken up as supported by the union of workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen"*

In above case law at the material point of time the establishment of The "Hindu" had besides the aggrieved workman, only nine employees, out of them seven sere serving at the administrative side and two were journalists. The aggrieved workman and one more were members of Bombay Union of Journalists, the second was not a member of the union. The union was a trade union, membership of which was open to all persons who were dependant for their livelihood upon the practice of journalism etc. Thus including the aggrieved workman, there were only three working journalists. One of them had raised the dispute. According to the Hon'ble Apex Court if out of the remaining two journalists one had supported the cause of aggrieved workman, it would be an industrial dispute. Thus according to the above case law even one workman out of the two was considered to be appreciable number of workmen which shows that it is not the number of workmen but the representative character of the group of workmen which is material to convert an individual dispute into industrial dispute.

13. In **Workmen** v. **Dharmpal Prem Chand**, AIR 1966 SC 182 Hon'ble the Apex Court held that notwithstanding the width of the words used in Section 2(k) of the Act of 1947 a dispute raised by an individual workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by a number of workmen. The Hon'ble Court also propounded if there is no union of workmen in an establishment, a group of employees can raise the dispute which become an industrial dispute, even though it is a dispute relating to an individual workman.

14. Discussing the principles of law enunciated in **Bombay Union of Journalists** (supra) and **Workmen of Dharampal Prem Chand** (supra) the Hon'ble Calcutta High Court in **M/s. Reckitt & Colman of India Ltd.** v. **Fifth Industrial Tribunal & Ors.**, 1980 LAB. I.C. 92 has further elaborated the representative character of union or the group of workmen. In this case 12 out of 18 car drivers had raised the dispute supported by the union, but the question involved in this case was whether the 18 car drivers should be taken to be the total number of workmen for the purpose of

considering whether a substantial number of workmen had raised the dispute? The Hon'ble Court was of the opinion that as soon as it is held that the drivers form a distinct category and are in a position to affect the industry, the total number of workmen should be the total number of such workmen forming the particular class or category, the drivers. The Court treated the 12 car drivers who had raised the dispute to form a substantial part of total number of 18 drivers. The Hon'ble Court also endorsed the test laid down in its earlier decision in **Mitsubishi Sholi Kaisha Ltd.** v. **The Tenth Industrial Tribunal of West Bengal**, (1972) 76 Cal WN 753 as to whether the group of workmen are in such a position as to affect or impede the smooth operation of the company by raising a dispute, if yes, then it is an industrial dispute.

15. In the instant case even if the union is not taken to be competent to have espoused the cause of the aggrieved workmen, 61 workmen have admittedly raised the present dispute who were working with Kolkata Port Trust in different capacity of Bhandary, Bearer, Topaz and Masalchi. The management has taken the stand that all these 61 workmen were contractual workmen. Thus these workmen form a category in themselves sufficient to raise the dispute. By their number and also by the nature of job they are doing it can be safely said that they are in a position to affect or impede the smooth operation of the Kolkata Port Trust. Therefore, even if the added union is not taken to have representative character, the aggrieved workmen themselves are sufficient to raise the dispute. Therefore, the reference cannot be said to be not maintainable on this count.

16. Now coming to the issue of regularization of the workmen under reference, they have claimed to have been working in the Marine Department of Kolkata Port Trust for 30 years and have also claimed to have been doing the same job as the permanent employees are doing. Despite that their services were not regularized and the management has forced them to take one day put off after every forty-one days' service. Thus, according to the workmen their working against regular vacancies and one days put off is false and artificial and a device developed by the management with an ill-motive of depriving them from getting permanent status. Contrary to it, the management has contended that these 61 persons are contractual workers, not appointed against permanent post. Therefore, they are not entitled for regularization of their services.

17. For his argument, the authorized representative of the added union has cited **Suresh Kumar** v. **State of Hariyana & Another**, 2004 (8) SLR 656, **Union Territory of Chandigarh & Others**. v. **Thangavel & Others**, 2004 (8) SLR 448, **State of Nagaland & Another** v. **Smt. Asieno Sakhrie**, 2006 (2) SLR 561, **Nanu Devi** v. **Food Corporation of India & Others**, 2004 (2) SLR 186, **Ved Prakash & Others** v. **State of Hariyana & Others**, 2004 (2) SLR 784, **Nirpender Singh & Others** v. **State of Punjab & Others**, 2004 (2) SLR 4, **Union of India & Others** v. **Vartak Labour Union**, (2011) 4 SCC 200, **Vishwanath Pandey** v. **State of Bihar & Others**, (2013) 10 SCC 545, **State of Gujarat & Others** v. **PWD Employees Union & Others**, (2013) 12 SCC 417 and **State of H.P. & Others** v. **Gehar Singh**, (2007) 12 SCC 43.

18. On behalf of the management **Secretary, State of Karnataka & Others** v. **Umadevi & Others**, (2006) 4 SCC 1, Appeal (Civil) 5666 of 2006, **Union of India & Others** v. **Sheela Rani**, Appeal (Civil) 1037 of 2007, **State of H.P. & Others** v. **Gehar Singh**, **Hindustan Aeronautics Ltd.** v. **Dan Bahadur Singh & Others**, (2007) 6 SCC 207, Civil Appeal No. 486 of 2011, **State of Rajasthan & Others** v. **Daya Lal & Others** (Supreme Court), **Union of India & Others** v. **Vartak Labour Union**, (2011) 4 SCC 200 and **State of Gujarat & Others** v. **PWD Employees Union & Others** (supra) have been cited.

19. At this stage it has become necessary to discuss the case laws cited by the parties so that the ratio may be applied to the facts of the present case. In **Suresh Kumar** v. **State of Hariyana** (supra) the workman worked for 11 years as daily wager on the post of Chowkidar in boys' hostel. Salary was paid to him from the students' fund. The Hon'ble Court held that payment of salary from students' fund cannot be made a ground to deny him the policy framed by the Government for regularization of services of daily wagers. Therefore, a direction was issued for his regularization.

In **Union Territory of Chandigarh** v. **Thangavel** (supra) the workmen who continued in service for 15 to 20 years as daily wagers were directed to be regularized as work done by them not of temporary nature.

In **State of Nagaland** v. **Smt. Asieno Sakhrie** (supra) although the appointment was on contract basis, the petitioner was appointed on compassionate ground in the Nagaland Civil Secretariat. Respondent had pleaded that since she was appointed on contract basis, her services cannot be regularized. The Respondent also denied existence of any policy for compassionate appointment. However, treating petitioner's case for special consideration, her services were regularized. The case of the petitioner was decided as a special case, not applicable to other casual employees. Therefore, it has got no binding effect.

In **Nanu Devi** v. **FCI** (supra) the Hon'ble High Court of Gauhati directed to consider the case of petitioner for regularization who was appointed as casual worker at a fixed monthly salary calculated on daily wage basis.

In **Ved Prakash** v. **State of Hariyana** (supra) Hon'ble Punjab & Hariyana High Court held that if the ad-hoc employees fulfils the terms and conditions laid down in policy of regularization, they are entitled for regularization.

In **Nripender Singh** v. **State of Punjab** (supra) also the petitioner who was also working continuously for 10 years as daily wager was directed to be regularized as he worked for a fairly long period satisfying the ingredients of continuity of service and he was also discharging function similar to that being discharged by the regular counterparts.

In **Union of India** v **Vartak Labour Union** (supra) even long period of employment as casual labour held not by itself sufficient to sustain claim for regularization.

In **State of Gujarat** v. **PWD Employees Union** (supra) the Court reiteratred the Constitutional Bench judgment of Umadevi that regularization can be directed only when initial appointment is not suffering from any illegality/irregularity.

20. However, the above case laws were decided by the Hon'ble High Courts prior to the decision of the Constitution Bench of the Hon'ble Apex Court in **Secretary, State of Karnataka** v. **Umadevi** (supra) by which the Hon'ble Apex Court has settled the issue of regularization. The relevant portion of the judgment may be quoted as below:

"……Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing the constitutional and statutory mandates."

"36. While directing that appointments, temporary or casual, be regularized or made permanent, Courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his engagement. He accepts the employment with eyes open. It may be true that he is not in a position to bargain – not at arms length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, even the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the

employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

21. The Hon'ble Apex Court has also taken care of those persons who had been given irregular appointments in duly sanctioned posts for a long period. The Hon'ble Court has held that the Central Government or the State Government and their instrumentalities should regularize their service as a one time measure as below:

"44. One aspect needs to be clarified. There may be cases where irregular appointment (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarjan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for 10 years or more but without the intervention of orders of Courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

22. Reiterating the principles of law as laid down in **Umadevi** case (supra) the Hon'ble Apex Court in **Hindustan Aeronautics Ltd**. v. **Dan Bahadur** (supra) held that unless there exists some rule, no direction can be issued for continuation in serviceor payment of regular salary to a casual, ad hoc or daily rate employee as held in the **Secretary, State of Karnataka** v. **Umadevi**.

23. Relying on the above decision of the Constitution Bench of the Hon'ble Apex Court the management of Kolkata Port Trust has contended that the appointment of the workmen under reference was of contractual nature which expired with the period of contract. Though the added union has denied that services of the workmen under reference were of contractual nature, but the union itself has filed appointment letters of some workmen say, Ashok Kumar Seal, Swapan Kumar Das, Radha Charan Sarkar in which it has been specifically mentioned that the engagement was contractual for specific period mentioned in the letter. These letters were issued to the concerned workmen for a specific period in short term vacancy, but it is not denied, rather admitted by the management that the 53 workmen under reference are still working with Kolkata Port Trust. The authorized representative of the management has failed to explain as to how these workmen are continuing with their job, if the contractual period has expired. However, there is nothing on record to show that workmen concerned were appointed as against substantive vacancies. Hence the ratio of **Secretary, State of Karnataka** v. **Umadevi** (supra) is fully applicable in this case.

24. At this juncture the authorized representative of the added union has contended that even if there is no evidence to show that the workmen concerned are working against permanent posts and they were appointed against substantive vacancies, they are working under Director, Marine Department of Kolkata Port Trust since 1989, but the management of Kolkata Port Trust is not inclined to make them permanent or to absorb them in services in order to avoid their regularization and the workmen are forced to take one day put off after 41 days of service. Thus the management of Kolkata Port Trust has employed these workmen as 'badlis', casuals or temporaries adopting unfair labour practice. The added union has also contended that where there is evidence to demonstrate that the employer has adopted an unfair labour practice, **Secretary, State of Karnataka** v. **Umadevi** does not apply and the workmen concerned will be entitled to be regularized in services. For his contention the authorized representative of the added union has relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 10856 of 2014, **Durgapur Casual Workers Union & Ors.** v. **Food Corporation of India & Ors.** decided on 9th December, 2014 (2015 LAB.I.C 771).

25. In **Durgapur Casual Workers Union** case (supra) the issue of absorption of casual workmen by the management of FCI was referred by the Government to the Tribunal. After evidence of parties, the Tribunal answered the reference in favour of the workmen and held that continued casualisation of service of workmen amounted to unfair labour practice as defined in Item No. 10 in Part-I of Fifth Schedule of the Act of 1947. The corporation filed writ petition against the Award passed by the Tribunal which was dismissed by the Hon'ble Single Judge of Calcutta High Court. Defence of the corporation was that the appointments of the workmen were back door appointments, therefore, they were not entitled for regularization in view of decision of the Hon'ble Apex Court in **Umadevi case** (supra). However, the Division Bench of the Hon'ble Calcutta High Court set aside the Award relying upon **Umadevi case** (supra). The Hon'ble Apex Court in above cited case of **Durgapur Casual Workers Union** (supra) discussed the effect of the ratio of **Umadevi** case at length. But relying on **Maharashtra State Road Transport and another** v. **Casteribe Rajya Parivahan Karmachari Sanghatan**, (2009) 8 SCC 556 held that where the Tribunal has given specific finding of

unfair labour practice on the part of the management corporation, the Industrial Tribunal is not stripped of its power under the Industrial Disputes Act, 1947. The Hon'ble Apex Court quoted some paragraphs of **Maharashtra State Road Transport** (supra) with approval. The relevant paragraph may be mentioned as below:

"34. It is true that Dharwad Distt. PWD Literate Daily Wage Employees' Assn. v. State of Karnataka, (1990) 2 SCC 396 arising out of industrial adjudication has been considered in State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.

35. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself ws made regularly in terms of the constitutional scheme.

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the party of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 10 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

26. Apart from this, the Hon'ble Apex Court has also reiterated its earlier judgment of **Ajaypal Singh** v. **Hariyana Warehousing Corporation** in Civil Appeal No. 6327 of 2014 decidedon 9th July, 2014 in which the Hon'ble Court has held that the provisions of Industrial Disputes Act and power of Industrial and Labour Court provided therein were not at all under consideration in **Umadevi** case. The issue pertaining to unfair labour practice was neither the subject mater for decision, nor was it decided. The Industrial Disputes Act made for settlement of industrial disputes prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees. The Hon'ble Court also held that it is always open to the employer to issue an order of retrenchment on the ground that initial engagement of the employees was not in conformity with the Articles 14 and 16 of the Constitution of India. Thus even after conferment of permanent status, the employer can pass order of retrenchment of the employees in accordance with the provisions of Section 25F of the Act of 1947. Thus where there is unfair labour practice on the part of the employer in continuing the casual workers for a long period without making them permanent, the ratio of **Umadevi** case is not applicable and Tribunal has power to stop the unfair labour practice by the employer.

27. In the instant case, it is not disputed that the concerned workmen are working with the management of Kolkata Port Trust since 1989. This fact is also admitted by the management witness, WW-01, Shri Prabhat Kumar Chattopadhyay. The union's witnesses, WW-01,Shri Sanjay Kumar Barua and WW-02, Shri Asit Kumar Bairagi have deposed that they have been shown put off on each and every 41 days, but in reality they have not been put off their duty. They have further stated that as and when they were on vessel, specially down the river, they had to work continuously without any break of service and in attendance register one day put off after every 41 days work is also admitted by the management in Ext. W-014 and also by MW-01, Shri Prabhat Kumar Chattopadhyay in his cross-examination where he has deposed that "the said employees are said to be contractual employees as they are given one day's break after a spell of 41 days work and their remuneration are calculated on the basis of number of days work performed by them." Thus break of one day artificial put off is also reflected from the statement of the management witness. Thus breaks in service by the management is claimed to be unfair labour practice by the added union. The unfair labour practice has been defined under Section 2(ra) of the Act of 1947 to mean any of the practices specified in the Fifth Schedule. Item No. 10 of the Fifth Schedule mentions as follows:

> "10. To employ workman as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

28. In the instant case also it is admitted between the parties that the concerned workmen are working with Kolkata Port Trust since 1989. Though the management has branded these workmen as contractual workmen, but the management has failed to show as to how even after expiry of terms of contract, these workmen continued to work. Contrary to it the case of added union is that the management has deliberately continued the workmen under reference as "badlis" or casual workers with the object of depriving them from the status of permanent employees. The evidence available on record is sufficient to show that the workmen have been kept as casual workers and they have been forced to

take put off of one day after service of every 41 days. This is nothing but unfair labour practice on the part of the management of Kolkata Port Trust.

29. This is not out of place to mention that out of 61 workmen, 8 workmen are not working with Kolkata Port Trust at present. These names have been disclosed by MW-01, Shri Prabhat Kumar Chattopadhyay in his examination in chief, but the added union has not cross-examined him on this point. The only question which has been asked to the witness is whether these employees worked continuously for 17 months. Hence the statement of the witness which is not challenged by the added union shall be taken to be admitted. Therefore, persons who are not presently working with the Kolkata Port Trust can in no case be absorbed in service. Only those workmen are entitled for absorption who are presently working with the Kolkata Port Trust.

30. Further as held by the Hon'ble Apex Court in Civil Appeal No. 5666 of 2006, Union of India v. Sheela Rani decided on 08.12.2006 regularization cannot be directed from the back date, as it will disturb the seniority or regularly appointed employees in the cadre. Hence the workmen would be entitled for regularization with effect from the date of publication of this Award.

31. In view of above, continuance of the workman concerned with breaks as casual workers for a period of 30 years from now certainly amounts to unfair labour practice. Therefore, social justice demands that the order of absorption of the workmen concerned may be passed directing the management of Kolkata Port Trust to absorb these workmen under reference who are still working with the Kolkata Port Trust.

32. Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
1st August, 2019

नई दिल्ली, 8 अगस्त, 2019

का.आ. 1496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम के पंचाट (संदर्भ सं. 2/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.08.2019 को प्राप्त हुआ था।

[सं. एल–12012/65/2009–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 8th August, 2019

S.O. 1496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 08.08.2019.

[No. L-12012/65/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 31st day of July 2019, 9th Sravana 1941)

ID No. 2 of 2010

Workman… Smt. Rema K. K,
Kurapallil, Kunchutheni PO,
Kunchutheni,
Distt. Idukki.

By Adv. Anil Kumar

Management… General Manager (HRM),
Union Bank of India,
GM's office,
Central Office, 239,
Vidhan Bhavan Marg,
Nariman Point,
Mumbai – 400021

By Adv. Ajay Khosh

This case coming up for final hearing on 7-6-2019 and this Tribunal-Cum-Labour Court on 31-7-2019 passed the following

AWARD

1. In exercise of the powers conferred by clause(d) of Sub Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947), the Government of India, Ministry of Labour by its order No. L-12012/65/2009-IR(B-II) dated 12-11-2009 referred the following dispute for adjudication by this Tribunal-

"Whether the action of the management of Union Bank of India in dismissing Smt. Rema K. K, an ex-employee of its Rajakkad Branch from the service for the alleged misconduct of non-performing of duties which were not supposed to be attended to by a part time sweeper was justified? To what relief this workman is entitled to?"

2. According to the Counsel, the worker joined the service of the management as Part Time Sweeper in the year 1987 in its Rajakumari branch. While she was working in Rajakkad branch, she was subject to disciplinary action. She was issued a memo on 17-7-2006 alleging certain misconducts. She submitted reply on 19-8-2006. Another charge memo was issued to her on 31-8-2006 and an enquiry was ordered against her. In the above chargesheet, it was mentioned that the memos dated 27-12-2005, 28-2-2006, 23-5-2006 & 17-7-2006 will form part of the charge memo. During the pendency of the proposed enquiry, a supplementary chargesheet dated 15-2-2007 was issued and the Enquiry Officer commenced the enquiry on 24-7-2007. The worker sought the assistance of a lawyer to defend her case since the allegations made were of very serious nature. The Enquiry Officer rejected the claim and allowed her to engage a Union Representative as Defence Assistant. The Enquiry Officer proceeded with the enquiry on the first sitting itself by marking 44 documents and examining the management witness. The request seeking time to engage a defence representative was denied by the Enquiry Officer. The worker studied only upto 6^{th} standard and she was not well aware of the proceedings of enquiry. The Enquiry Officer did not understand Malayalam and recorded all the proceedings in English which she did not understand. Appointing an Enquiry Officer who doesnot understand Malayalam to conduct an enquiry against a Part Time Sweeper was done with some ulterior motive. Capitalizing on the ignorance of the worker, the Enquiry Officer conducted the proceedings and submitted his report finding that 6 out of 7charges are proved against the workman. The enquiry was conducted in flagrant violation of the principles of natural justice. There was no reliable witness or documents in the enquiry to prove the allegations against the worker apart from the testimony of interested witness. The worker was not given a proper opportunity to defend her case. The findings of the Enquiry Officer are perverse and are not based on any material evidence. In the above circumstances the enquiry conducted against the worker is liable to be set aside. The worker had put in 22 years of unblemished service under the management. She is a widow having 3 school going children. The punishment of dismissal imposed on the worker is too harsh and is disproportionate to the charges alleged to have been proved in the enquiry. She was not alternatively or profitably employed or engaged anywhere.

3. The management filed their written statement denying all the above allegations. They raised a preliminary issue that there is total non-application of mind on the part of Government of India in framing terms of reference in as much as the worker was punished for her acts of commission which amounted to misconduct and not for non-performing of duties. It was also pointed out that part time sweepers are required to work in branch for 5 hours per day and they will have to attend other duties for which she was suitably compensated.

4. According to the management, the domestic enquiry conducted against the worker was as per rules and following the principles of natural justice. The worker participated in the enquiry effectively. Hence the validity of the enquiry may be decided as a preliminary issue and in case it is found that the domestic enquiry was not fair and proper, the management may be given an opportunity to adduce evidence under Section 11-A of Industrial Disputes Act to substantiate the punishment of dismissal imposed on the worker. The charges levelled against the worker are of grave nature. In the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee. If this is not done, the confidence of the public would be impaired. Since the worker committed misconduct

for his personal aims and against the interest of the bank and the customers, disciplinary action was initiated against her. The allegations levelled against the worker are-

(1) The worker collected cash in local collection of cheques from Idukki District branch, Rajakkad branch and failed to remit the collected amount of Rs.13557/- at Rajakkad branch.

(2) Cheque No.16824 drawn on Idukki District Cooperative Bank was returned unpaid on 17-4-2006. The cheque was not returned to the Bank and the same was returned only after the audit officials visited her house on 30-6-2006.

(3) The worker intentionally misplaced the LCC Register.

(4) The worker handed over with the branch officials 2 more cheques which was sent through her for collection on 23-3-2006 and 28-3-2006 and were presented on 23-6-2006. She kept the cheques with her for about 3 months.

(5) The worker borrowed an amount of Rs.2500/- in April 2006 and did not repaid it.

(6) She borrowed Rs.1500/- in February 2006 from Shri V.K. Antony, an Account Holder and did not repay the same.

(7) She borrowed an amount of Rs.1400/- from Shri Nobi, Proprietor of M/S. Johns Gift Palace and did not repay the same.

(8) The worker had taken an amount of Rs.6500/- to be credited to M/S. Haritha Swayam Sahaya Sangham and she entered the credit in the pass book in her own handwriting. It was later found that the money was not deposited in the bank against the above account.

(9) One Mrs. Laila Sali lodged a complaint with the police alleging that the worker had taken Rs.2000/- from her hand bag while travelling together in a bus on 7-10-2006.

(10) The worker received Rs.8000/- from a complainant for crediting into her account but the same was not credited inspite of repeated reminders.

(11) The worker left the branch on 24-6-2006 without obtaining proper permission.

(12) The worker remained unauthorisedly absent from 10-10-2006.

The above acts of omission and commission constitute the following misconducts and she was charged for the same. She was responsible for doing acts prejudicial to the interest of the bank and has committed gross misconduct by wilfully disobeying the lawful and reasonable orders of the management. Remaining unauthorisedly absent for more than 30 days is also a gross misconduct. She has also committed minor misconducts such as absence without leave, breach of rule of business of the bank, collecting moneys within the premises of the bank without previous permission of the management and incurring debts to an extent considered by management as excessive. With regard to the conduct of domestic enquiry, it is pleaded that the worker was afforded adequate opportunity to represent her case. She wanted an Advocate as her Defence Assistant which was not legally permissible as neither the Enquiry Officer nor the Presenting Officer were legally qualified persons. She was allowed to take the assistance of a Union representative or a co-worker which she did not avail. The management marked documents by consent and without any objection from the worker. She fully participated in the enquiry. Since the Enquiry Officer was not well versed in Malayalam, the deposition of witnesses and enquiry proceedings were translated to her. The enquiry was posted to 13-8-2007 to facilitate the worker to arrange a Defence Representative and also to put forth her defence properly. However she failed to avail the same. The copies of the enquiry proceedings were given to the worker on a day to day basis. After completing the enquiry, the Enquiry Officer found that the following misconducts were proved against the worker.

Gross misconducts :

Doing acts prejudicial to the interest of the bank, remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days and wilful disobedience of the lawful and disobedience orders of the management.

Minor misconducts :

Absence without leave, breach of rules of bank and incurring debts to an extent considered by management as excessive.

After the receipt of the Enquiry Report, a copy of the report along with the proposed punishment was communicated to the worker inviting her explanation for the same. She was also given a personal hearing on 16-10-2007. After considering the Enquiry Report, the proceedings of enquiry and the submissions made by the worker, the Disciplinary Authority found that the enquiry was conducted in a fair and proper manner and on the basis of the findings of the enquiry, the worker was dismissed from service without notice. The appeal preferred by her was also dismissed on 30-4-2008. From the above, it is clear that the enquiry was conducted in a fair and proper manner and the findings of enquiry is based on

evidence adduced during the course of enquiry. Since the misconduct alleged and proved against the worker are of very serious nature, she is not entitled to be reinstated into the service of the Bank.

5. The worker filed her rejoinder denying all the allegations in the written statement and affirming the claim made in the claim statement. According to the worker, the allegations based on which the worker was terminated has nothing to do with her work. She also denied the statement of the Bank that she was being paid by the Bank for doing other duties. There is no provision in the bipartite settlement enabling the management to require the workman to perform any duties other than that of a sweeper. Punishment imposed on the worker is excessive and not commensurate with the charges said to have been proved in the enquiry.

6. The management raised a preliminary objection regarding maintainability of reference since the reference made by the Government of India is at variance with the actual issue involved. According to the counsel for the management, the actual issue involved is that the worker is punished for her acts and ommissions which amounted to misconduct on her part and not for non-performing the duties which were not supposed to be attended by a part time sweeper.

7. The worker has a case that she was only a part time sweeper and she was not supposed to handle the money of the bank. Even a cash peon of the bank is supposed to handle only upto Rs.5000/- as per 9th Bipartite settlement dated 27-4-2010. As per the settlement dated 19-10-1966, a subordinate staff can be asked to officiate in a higher cadre by an order in writing. According to the worker, she was not given any order in writing to officiate in a higher cadre and was not paid any allowance as stipulated vide the settlements. It can be seen from the pleadings, documents and arguments before this Tribunal that the worker is proceeded against for the omission and commission of serious misconducts, which culminated in the dismissal of the worker. Hence it is very clear that the language of reference is not exactly in consonance with the dispute with the worker and management. As per Section 10(1) of the ID Act 1947, the appropriate Government may "refer the dispute or any matter appearing to be connected with or relevant to the dispute". As per Section 10(4) of ID Act, the Labour Courts and Tribunals "shall confine its adjudication to those points and matters incidental thereto." By a literal interpretation of the above provisions, it is very clear that the Industrial Tribunal being creation of statute cannot go beyond the scope of the reference.

In the case of **Tata Iron & Steel Col.Ltd. Vs State of Jharkhand, 2013(4) LLN. 14(SC),** the Hon'ble Supreme Court held that

> "When the reference is defective, the right course of action open to Courts is to quash the reference with a direction to make a fresh reference incorporating the real essense of the dispute."

The Hon'ble Supreme Court in Delhi Cloth and General Mills Pvt. Company Ltd. Vs The workman, AIR(1967) SC-469 held that –

> " The Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases, the reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance leading to the trouble"

Going by the above judicial dictums laid down by the Apex Court, the Tribunal shall attempt to construe the order of reference in a fair and reasonable manner. As pointed out by Hon'ble Supreme Court in **Express Newspaper Ltd. Vs. workman, AIR(1963) SC 567**, we may have to look into the substance rather than the form of the order of reference.

8. This is a case where the worker was dismissed from service of the Bank in 2007. As per the order of reference, the issue to be adjudicated is the dismissal of the worker from service of the Bank for the alleged misconduct of non performing duties which are not supposed to be attended by a Part Time Sweeper. From the pleadings, it is seen that the issue involved is the dismissal of the worker but for alleged misconduct of misappropriation of money belonging to the bank, unauthorised absence etc. It will be really harsh on the worker, who happens to be a Part Time Sweeper, if she is directed to get a proper reference after 12 years of her dismissal. It is felt that the appropriate course of action at this stage will be to adopt the dictum laid down by the Supreme Court in Delhi Cloth Mills Case (Supra) that the pleadings of the parties to the dispute shall be looked in to cull out therefrom the various points about which the parties are at variance.

9. After completion of pleadings, the Enquiry Officer was examined as MW-1 and the enquiry file is marked as Exhibit M-1. Validity of the enquiry was considered as a preliminary issue. The enquiry was found to be invalid and vitiated by violation of principles of natural justice and denial of reasonable opportunity by this Tribunal vide its order dated 3-6-2014. The management was allowed to adduce fresh evidence on their request to prove the charges against the worker. The management examined its witness MW-2 and marked Exhibits M-1(a) to M-1(aq). The workman did not adduce any oral or documentary evidence.

10. Having found the preliminary issue of maintainability and validity of the enquiry against the management, the following issues are framed for final adjudication-

(1) Whether the management succeeded in proving the charges against the worker through legal evidence?

(2) Whether the punishment awarded is legal and justified and proportionate to the charges proved?

(3) If not , relief if any.

11. **Issue No.1-**

Since the enquiry conducted by the management is found to be invalid, this Tribunal will have to examine only the evidence adduced before this Tribunal to arrive at a conclusion whether the management succeeded in proving the charges. The Hon'ble Supreme Court in the case of **Neeta Kapilesh Vs Presiding Officer, Labour Court, 1999-KHC-919** held that once the Tribunal finds an enquiry illegal, evidence in the enquiry is wiped out and the Tribunal will have to record the findings on the basis of evidence before it. The same sentiment was expressed by Hon'ble High Court in **Lux Co Electronics Vs Presiding Officer Industrial Tribunal, 2004-LLR-461**.

12. According to the management, the following charges were levelled against the worker-

(1) Doing acts prejudicial to the interest of the Bank

(2) Remaining unauthorisely absent for more than 30 days without intimation.

(3) Wilful disobedience of the lawful and reasonable orders of the management.

(4) Absence without leave.

(5) Breach of rules of business of the Bank.

(6) Incurring debts to an extent considered by the management as excessive.

Details of allegations are:-

(1) The worker collected cash in local collection of cheques from Idukki District branch, Rajakkad branch and failed to remit the collected amount of Rs.13557/- at Rajakkad branch.

(2) Cheque No.16824 drawn on Idukki District Cooperative Bank was returned unpaid on 17-4-2006. The cheque was not returned to the Bank and the same was returned only after the audit officials visited her house on 30-6-2006.

(3) The worker intentionally misplaced the LCC Register.

(4) The worker handed over with the branch officials 2 more cheques which was sent through her for collection on 23-3-2006 and 28-3-2006 and were presented on 23-6-2006. She kept the cheques with her for about 3 months.

(5) The worker borrowed an amount of Rs. 2500/- in April 2006 and did not repaid it.

(6) She borrowed Rs.1500/- in February 2006 from Shri V.K. Antony, an Account Holder and did not repay the same.

(7) She borrowed an amount of Rs.1400/- from Shri Nobi, Proprietor of M/s. Johns Gift Palace and did not repay the same.

(8) The worker had taken an amount of Rs. 6500/- to be credited to M/s. Haritha Swayam Sahaya Sangham and she entered the credit in the pass book in her own handwriting. It was later found that the money was not deposited in the bank against the above account.

(9) One Mrs. Laila Sali lodged a complaint with the police alleging that the worker had taken Rs.2000/- from her hand bag while travelling together in a bus on 7-10-2006.

(10) The worker received Rs. 8000/- from a complainant for crediting into her account but the same was not credited inspite of repeated reminders.

(11) The worker left the branch on 24-6-2006 without obtaining proper permission.

(12) The worker remained unauthorisedly absent from 10-10-2006

13. During the course of argument, the learned counsel for the worker raised an objection regarding the documents produced in this proceedings. According to him, all the documents are photocopies and some of the documents such as Exhibit M-1(y) are incomplete. It is an accepted principle of law that documents which are marked during the course of a legal proceedings without objection cannot be challenged in the subsequent dates of proceedings. The learned counsel for management relied on the decision of Hon'ble High court of Kerala in **Anandan Nambiar Vs**

Rajalakshmi, 1998(1)KLT-536 to argue that copies of documents admitted in the court without objection as to its admissibility cannot be challenged later in the proceedings or in the Appellate Court.

14. One of the main allegation in the charge against the worker is that she collected cash towards three cheques on 17-4-2006 as part of local collection of cheques (LCC) from Idukki District Cooperative Bank, Rajakkad branch totaling Rs.13557/- and did not remit the amount with the management Bank. Exhibit M-1(l) and M-1(n) are the documents relied by the management to show that 4 cheques were sent for collection through LCC. From Exhibit M-1(n), it can be seen that the cheques amounting to Rs. 13557/- is realized and one cheque for Rs.10700/- is returned by the Bank. Exhibit M-1(o) is the report sent by the Manager to the Regional Office which indicates that the worker has not returned the cash even on 26-6-2006. Exhibit M-1(o) also speaks of withholding of two earlier cheques by the worker and dishonoring of cheque worth Rs.15000/- issued by the worker to one Mr. Sivadas. Exhibit M-1(p) shows that an amount of Rs. 13557/- is adjusted by the Bank debiting suspense account. Exhibit M-1(x) dated 19-8-2006 is the reply given by the worker to the management for Exhibit M-1(w) memo dated 17-7-2006. In the Exhibit M-1(w) memo, apart from the above misappropriation of funds, other charges such as non return of cheques, intentional misplacement of LCC Register and complaints from various persons regarding non return of money borrowed from them were included. In her reply in Exhibit M-1(x), she admits that (1) she took the cheques on 17-4-06 for collection and 3 cheques were encashed and one was returned (2) money is borrowed from various persons because of the sickness of her husband and child . She also stated that the cash and un-encashed cheque could not be returned as the bag in which the cash and cheque were kept was stolen by a person to whom she owes money.

15. According to the counsel for worker, the worker was only a part time sweeper and she was only officiating as peon during the relevant point of time. As per para 9.10 of Settlement on Industrial Disputes dated 19-10-1966, whenever a Bank requests a workman to officiate in a post of a higher cadre, it will do so by an order in writing. Further as per 9th Bipartite settlement dated 24-10-2010 even a cash peon can handle only Rs.5000 in cash. In the present case, there was no order in writing to the worker to officiate as cash peon and further the amount involved for collection is Rs. 24257/- which is much higher than the authorized amount to be handled by a cash peon. Hence according to the counsel, this is a clear case where the worker is asked to perform duties which she is not supposed to do. Apart from the above, the learned counsel for the worker also argued that the signature of the worker in Exhibit M-1(a) doesnot tally with her signature in other documents. Exhibit M-1(a) is an admission by the worker that she has taken Rs.6500/- for deposit from a representative of M/s. Haritha Cooperative society on 12-9-2006 for deposit in their account, but the amount was not deposited by her in the account. The counsel also pointed out that Exhibit M-1(z) passbook entries doesnot tally with M-1(aa) ledger entries. He also expressed a doubt that the handwriting in exhibits M-1(e), M-1(ab), M-1(ac) and M-1(ad) are same, pointing to the fact that the complaints are fabricated by somebody to implicate the worker in the case. With regard to deliberate displacement of LCC Register, the learned counsel for the worker argued that as per Exhibit M-1(o), the register was available with the Bank till 18-5-2006, one month after the incident. As per exhibit M-1(y), the register was located on 1-7-2006 by Shri P.V. Soman, Daftary from among the old records and the same was not available from 18-4-2006. The learned counsel for the workman also argued that none of the complainants were examined before this Tribunal and all the complaints were marked only through MW-2. There is no loss to the Bank and the involvement of some body from the Bank in the whole episode cannot be ruled out.

16. I am not in a position to fully agree with the argument of the counsel for the workman. It is true that the rules require that when a subordinate staff is authorized to officiate in a higher position, it shall be done by an order in writing. This is particularly so when a regular Daftary is available in the Bank who can be entrusted with the responsibility of the LCC. It is very clear that the Bank branch violated many norms as pointed out in the special audit report i.e. exhibit M-1(y). It is mentioned therein that "also the branch has flouted the security norms while sending the sub staff for collection of LCC cheques". But the question is whether such flauting of norms by branch will give any authority to an employee to misappropriate the money belonging to the Bank for months together. The answer is in the negative. The management succeeded in proving that the money belonging to the Bank is misappropriated by the worker and she was also holding on to the cheques which were either returned or not submitted to the Bank for realization. The worker has admitted this part of the charge in Exhibit M-1(x) reply to the charge memo. It is not possible to accept the claim of the worker that the bag containing the cash as well as the cheque were snatched by some body while returning after the collection of cheque. Hence, the management succeeded in holding that the worker was withholding the money belonging to the bank unauthorisedly for a long period after the realization of the cheques.

17. With regard to the misplacement of LCC Register, there is no clarity regarding the involvement of the worker. Exhibit M-1(o) says that the LCC Register was not available for verification since 19-5-2006. As per exhibit M-1(y), " the LCC Register is reportedly missing since 18-4-2006, the date from which the fraud took place and the branch started a new LCC Register from 19-5-2006 without taking any effort to trace out the LCC Register". The missing LCC Register was finally traced in the old record room by the Daftary. It is not clear how the Bank handled the local cash collection for one month from 18-4-2006 to 19-5-2006 if the LCC Register was missing. Hence it is only a vague presumption that the LCC register is deliberately misplaced by the worker without any supporting evidence.

18. Another major charge against the worker in the memo is her unauthroised absence from 10-10-2006. Exhibits M-1(h), M-1(ak) & M-1(al) sufficiently indicate that the worker remained unauthorisedly absent from 10-10-2006. According to the counsel for management, the worker did not respond to any of the telegrams or memos issued to her for the unauthorized absence beyond one month from 10-10-2006. Unauthorized absence is a charge which can be proved through documents and the management has succeeded in proving that the worker was unauthorisedly absent for more than 30 days continuously without any intimation from 10-10-2006.

19. With regard to the allegation that the worker willfully disobeyed the lawful and reasonable orders, the management produced documents M-1(ag), M-1(ah), M-1(ak), & M-1(al). These exhibits support two charges against the worker- (1) that the worker remained unauthorisedly absent for more than 30 days and (2) that the worker disobeyed the reasonable orders of the superiors. Exhibit M-1(ak) is a memo issued to that effect to the worker. The worker neither responded nor obeyed the orders recalling her to join duty as per M-1(ah) & M-1(al) telegrams.

20. Another allegation against the worker by the management is breach of rules of business of the Bank. It is alleged that the worker issued a cheque to one V.K.Sivadas for Rs.15000/- without maintaining sufficient balance. The cheque is dishonoured twice by the bank. Exhibit M-1(e) is a complaint filed by one Shri Sivadas V.K dated 12-11-2005 alleging that the worker has borrowed Rs.15000/- from him on the basis of a cheque issued to him for the same amount. According to the complaint, he presented the cheque twice through Federal bank and the same is returned by the Bank. The management substantiated the allegation through documents M-1(a), M-1(b) and M-1(c). Exhibit M-1(d) is a cheque return memo issued by the management Bank to Federal Bank stating that the cheque issued by the worker is returned due to insufficiency of funds in the account. Exhibit M-1(h) dated 11-8-2005 is another cheque return memo issued by the management Bank stating that the payment against the cheque is stopped by the drawee. Exhibit M-1(f) is a copy of the communication issued by Federal Bank to Shri Shivdas V.K informing him of the dishonouring of the cheque by the bank. Exhibit M-1(g) is a cheque dated 2-5-2005 for an amount of Rs.15000/- issued by the worker to Shri V.K.Sivadas. Through these documents, the management succeeded in proving that the worker committed breach of rules of business of the bank.

21. The management produced photocopies of series of complaints filed by various customers against the worker alleging that she has taken money and favours from them and same is not returned to them. As rightly pointed out by the learned counsel for the worker, none of the complainants were examined to prove the authenticity of those documents. Hence the evidentiary value of these documents in a proceeding like this is under challenge. Hence I am inclined to reject those complaints as evidence in these proceedings.

22. The management succeeded in substantially proving all the major allegations against the worker. Hence I find that the major charges against the worker are substantially proved by the management through legal evidence. Hence **Issue No. 1 is decided in favour of the management and against the worker.**

23. **Issue No.2 & 3-** The charges levelled against the worker by the management are of very serious nature particularly the case which involves misappropriation of funds belonging to the management. The Hon'ble Supreme Court as well as High Courts have decreed that when an employee is holding a position of trust, any action on his part which creates mistrust among the management as well as the general public shall be seen as a serious misconduct. In the case of **State Bank of India Vs Ramesh Dinkar Punde, Civil Appeal No. 2055/2003**, the Hon'ble supreme court held that;

> **" It needs to be emphasized that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/ depositors would be impaired."**

In case **The Chairman and Managing Director, United Commercial Vs. P.C.Kakkar, (2003)4 SCC 364** the Honble Supreme court held-

> **"A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/ employee of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer/ employee of the bank. As was observed by this court in Disciplinary Authority cum Regional Manager Vs Nikunja Bihari Patnayak(1996) 9 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority."**

In the case of **Regional Manager UPSRTC Vs Hotilal (2003)3 SCC 605,** the Honble Supreme court observed that-

> **"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions**

or acts in a judiciary capacity, highest degree of integrity and trust worthiness is a must and unexceptionable."

Going by the law laid down by the Apex court in the above judgments, the penalty awarded in the present case is legally justified.

24. The only question that remains to be answered is with regard to the proportionality of the punishment awarded by the management to the worker. There is no doubt that the allegations against the worker by the management are of grave nature and is required to be handled as such. However it may be seen that the worker is only a Part Time Sweeper. In the normal course of business of the Bank, she is not supposed to handle the cash of the Management Bank. She was directed to attend the work as per the oral instructions of the Bank, which is not as per Bipartite Settlement. As already pointed out in Exhibit M-1(y), "the Bank has flouted security norms while sending the sub staff for collection of LCC cheques". Hence the Bank is also equally responsible for the misappropriation of cash by the worker, which is one of the major charges proved against the worker. Though, the other proved charges are also of serious nature, it may not warrant termination of her service. In cases of financial fraud, it is not proper to direct the Management to take her back in service. However considering the extenuating circumstances in this case as explained above, I am of the considered view that interest of justice will be met if the punishment awarded to the worker is modified to that of discharge with consequential benefits.

25. Hence the reference is answered holding that the **punishment of dismissal awarded to the worker for alleged misconducts is modified to that of discharge with consequential benefits.**

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of July 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness of the Workman - Nil

Witness of the Management-

MW-1- Shri P.Prabhakar, Retd. Chief Manager on 17-10-2011

MW-2- Shri Vishwanathan.C, Retd. Branch Manager on 19-2-2015

Exhibits for the Union/workman - Nil

Exhibits for the Management-

M-1	-	Enquiry File
M-1(a)	-	Details of cheques sent from 26-4-05 to 13-6-05
M-1(b)	-	Details of cheques sent from 11-8-05 to 26-8-05
M-1(c)	-	Copy of ledger book for period 1-11-05 to 31-10-05
M-1(d)	-	Memo dt. 10-6-05 regarding return of cheque of Rs.1500/-.
M-1(h)	-	Memo dt.11-8-05 regarding return of cheque of Rs.15000/- as payment stopped by drawer.
M-1(f)	-	Letter dt. 16-8-05 of Federal Bank to Shri Sivadas V.K
M-1(g)	-	copy of cheque dt.2-5-05 of Rs.15000/- with remark "payment stopped by drawer"
M-1(e)	-	Letter dt.12-11-2005 from Shri Sivadas V.K. to the Bank
M-1(i)	-	Copy of Memo dt. 27-12-2005 regarding return of Cheques due to insufficient funds.
M-1(j)	-	Copy of Memo dated 28-2-2006 constituting the charges against worker.
M-1(k)	-	Letter dated 23-5-2006 addressed to worker seeking Explanation.

M-1(l) - Copy of Sanction Register from 22-2-06 to 17-9-06

M-1(m) - Copy of Sanction Register form 12-6-06 to 11-7-06

M-1(n) - Copy of forwarding of cheques to IDCB Rajakkad Branch dt. 17-4-2006

M-1(o) - Letter dt. 26-6-06 of Rajakkad branch to Regional office, Union Bank.

M-1(p) - Copy of Letter of Rajakkad branch dated 24-7-2006

M-1(q)& 1(r) - Deposit slips

M-1(s) & 1(t) - Copy of credit voucher dt. 28-3-2006 & 23-3-06

M-1(u) - Copy of letter dt. 27-6-06 by Shri V.K.Antony to Rajakkad branch.

M-1(v) - Letter of worker dt. 28-6-07 to Bank

M-1(w) - Memo dt. 17-7-2006

M-1(x) - Letter of worker dt. 19-8-06 to UBI, Regional Office

M-1(y) - Special audit report in connection with fraud committed By worker.

M-1(z) - Copy of Saving Bank Pass Book of Haritha swayam Sahaya Sangham

M-1(aa) - Statement of account for period 1-10-05 to 30-9-06

M-1(ab) - Letter dated 13-10-06 of Haritha Swayam Sangham

M-1(ac) - Copy of complaint raised by Smt.Laila Sali

M-1(ad) - Copy of letter dt. 28-11-06 by Haritha Swayam Sangham to Bank

M-1(ae) - Undertaking dated 27-10-06 by the worker.

M-1(af) - Statement for period 1-10-06 to 14-10-06

M-1(ag) - Copy of letter dated 13-10-06 to worker regarding unauthorized absence.

M-1(ah) - Copy of telegram sent to worker to report on duty

M-1(ai) - Letter of Bank dated 1-1-2007 to Dr.S.V.Jayachandran

M-1(ak) - Memo dated 22-12-2006 issued to worker regarding unauthorized absence.

M-1(aj) - Copy of Medical Certificate dt. 1-1-2007 (Fitness)

M-1(al) - Letter dt. 12-1-07 declining leave request of worker

M-1(am)- Letter dated 10-9-05 of Rajakkad branch to Regional Office

M-1(an) - Forwarding letter dt.5-9-05 of complaint raised by one teacher against worker.

M-1(ao) - Copy of complaint dt. 31-8-2005 by Shri Kanjitanni

M-1(ap) - Letter of Cooperation Bank dt. 15-6-2006 regarding Collection of instruments- non receipt of proceeds

M-1(aq) - Copy of enquiry letter for Bills/ cheques sent for Collection

नई दिल्ली, 9 अगस्त, 2019

का.आ. 1497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 123/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2019 को प्राप्त हुआ था।

[सं. एल—20012/39/1999—आईआर (सी—I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 9th August, 2019

S.O. 1497.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 123/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. IISCO and their workmen, which was received by the Central Government on 07.08.2019.

[No. L-20012/39/1999-IR(C-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 123/1999

Employer in relation to the management of Jitpur Colliery M/S. IISCO

AND

Their workman

Present: Shri D.K.Singh**,** Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand. Industry : Coal

Dated : 29/04/ 2019

AWARD

By order No. L-20012/39/1999-IR(C-1) dated 04/06/1999, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Bihar Colliery Kamgar Union for regularization of the 13 workman, as per list enclosed, working as stone cutter in the Jitpur Colliery of IISCO is justified ? If yes to what relief the workmen are entitled and from what date?"

Note:- list of workmen is not enclosed/received alongwith order of reference.

2. After receipt of the reference, both parties were noticed but both the parties failed to appear before this Tribunal. Subsequently Two regd. notices were issued but even then none of the parties appeared. Case is pending since long and workmen is not appearing before Tribunal so it appears that the workmen has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 9 अगस्त, 2019

का.आ. 1498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 173/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.08.2019 को प्राप्त हुआ था।

[सं. एल–20012/21/1996–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 9th August, 2019

S.O. 1498.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 173/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ECL and their workmen, which was received by the Central Government on 05.08.2019.

[No. L-20012/21/1996-IR(C-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 173/1999

Employer in relation to the management of Brakar Engineering and Foundry Division M/S. ECL

AND

Their workmen

Present: Sri D. K. Singh**,** Presiding Officer

Appearances:

For the Employers : Shri S.P.Bhattcharjee, Advocate

For the workman : None

State : Jharkhand. Industry- Coal

Dated : 17/07/ 2019

AWARD

By order No. L-20012/21/1996-IR(C-I) dated 25/10/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub–section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

English version of Hindi Schedule

"Whether the demand of Bihar Pradesh Colliery Mazdoor Congress to absorb Sri Hamid Mia and 53 others as per list after Nationalization Barakar Engineering and foundry Division ECL and after lockout of workshop on 28.01.1980 is proper and justified? If yes, to what relief the workmen is entitled and from what date?''

Note : List of workmen is not enclosed with order of reference.

2.After receipt of the reference, both parties were noticed. Workmen appeared for certain dates but subsequently failed to take steps before this Tribunal.. Thereafter two regd. Notices were issued but again no one appeared on behalf of the workman. The management has appeared regularly through lawyer. The case is pending since 1999 and workman is not appearing before this Tribunal. , so it seems that workman has not been interested in contesting the case. It is felt that the workman has lost his interest to resolve the matter. Hence "No dispute" award is passed. communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 9 अगस्त, 2019

का.आ. 1499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 60/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2019 को प्राप्त हुआ था।

[सं. एल—20012/373/1998—आईआर (सी—I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 9th August, 2019

S.O. 1499.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 60/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.08.2019.

[No. L-20012/373/1998-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 60/1999

Employer in relation to the management of Angarpathara Colliery M/S. BCCL

AND

Their workman

Present: Sri D.K.Singh, Presiding Officer

Appearances:

For the Employers : Shri Gautam Mishra, Legal Asstt.

For the workman : Shri S.C.Gour, Rep

State : Jharkhand. Industry- Coal

Dated- 27.06. 2019

AWARD

By order No. L-20012/373/1998-IR(C-I) dated 17/04/1999 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Angarpathra Colliery of M/S BCCL in denial to provide employment to Sri Shiv Awatar Ray dependant son of Sri Ram Lal Gope, Ex- Trammer under para 9.4.3. of NCWA-IV (who was already declared medically unfit by the Apex Medical board on 15.3.91) is justified? If not to what relief the dependant son of Sri Ram Lal Gope is entitled?"

2. After receipt of the reference, both parties were noticed and during the hearing of the case, Ld. Counsel of Sponsoring Union has informed that workman has not been interested in contesting the case. It is felt that the workman has lost his interest to resolve the matter. Hence "No dispute" award is passed. communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 9 अगस्त, 2019

का.आ. 1500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया इंजीनियरिंग सर्विस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 04/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.08.2019 को प्राप्त हुआ था।

[सं. एल–11012/11/2017–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 9th August, 2019

S.O. 1500.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai (Ref. No. 04/2019) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Engineering Service Limited and their workmen, which was received by the Central Government on 08.08.2019.

[No. L-11012/11/2017-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE RAVINDRA NATH MISHRA**,** Presiding Officer

REFERENCE NO. CGIT-1/4 OF 2019

Parties: Employers in relation to the management of Air India Engineering Services Ltd

And

Their workmen

Appearances:

For the management	:	Mrs. Pooja Kulkarni, Adv.
For the All India Aircraft Engineers Association	:	Mr. Braj Bushan Das, Regional Secretary
State	:	Maharashtra

Mumbai, dated the 05th day of July, 2019

AWARD

1. Mr. Braj Bhushan Das as filed authorization by General Secretary of the Association. He has also filed Xerox copy on record showing that he is the Regional Secretary of the Association. He is also identified by Smt. Pooja Kulkarni, Advocate.

2. Matter has been referred by the Central Government in respect of a dispute regarding the tenure of domestic outstation posting. No Statement of Claim or Written Statement by the Management has been filed, instead the authorized representative of the Association has requested for withdrawal of the reference or to pass no dispute order as the management has modified the circular by which tenure of domestic outstation posting is reduced to 30 days.

3. In view of above, no dispute exists now.

4. Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1501.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स न्यू मंगलौर पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 105/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल-45012/1/1996-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/1998) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. New Mangalore Port Trust and their workman, which was received by the Central Government on 13.08.2019.

[No. L-45012/1/1996-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 02ND AUGUST 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 105/1998

I Party
The General Secretary,
New Mangalore Port
Staff Association,
NMPT Admn. Office Building,
Mangalore - 575010.

II Party
The Chairman,
New Mangalore Port Trust,
Panambur,
Mangalore - 575010.

Appearance

Advocate for I Party : Mr. B.D. Kuttappa

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-45012/1/96-IR(M) dated 23.11.1998 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2 (A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of New Mangalore Port Trust, Mangalore, in not promoting Shri H. Dadu Naika as Senior Mechanic is legal and justified? If not, to what relief the workman is entitled?"**

1. It is a union sponsored Industrial Dispute pertaining to the promotion of the workman Sh. Dadu Naika. The undisputed facts of the case is, the 2nd Party was constituted on 01.04.1980 under the provisions of MPT Act 1963. Till then it was a Central Government Department under the Ministry of Transport and Shipping. During the construction stage of the all weather Major Port at Panambur, the employees were at 2 different establishments:

i) Regular establishment for permanent work.

ii) Work-charged established for constructions work.

The first category was governed by Central Government Employees Service Rules and the second category by C.P.W.D Manual Volume-III. The 1st Party workman was appointed as Pump Attendant cum Mechanic under the work-charged established vide memo dated 29.07.1977 of the Executive Engineer, Construction Division, New Mangalore Port, Panambur. He belongs to Scheduled Caste Community and was promoted to the post of Senior Mechanic (Water Supply) w.e.f 05.03.1994.

2. The case of the 1st Party is, in the Seniority list 1st Party is shown to be junior to Sh. D. Lingappa who also belongs to Schedule Caste Community, when the selection took place to the post of Pump Attender cum Mechanics, 1st Party had scored more marks than Sh. D. Lingappa. But the Management in the selection list has shown Sh. D. Lingappa as Senior to 1st Party. Sh. D. Lingappa was promoted as Senior Mechanic (Water Supply) w.e.f. 05.09.1988. The 1st Party and 3 others were promoted to the post of Senior Mechanic vide order dated 05.03.1994. The order of initial appointment was issued to both of them on 29.07.1977. On account of postal delay, 1st Party reported to duty on 05.08.1977 and Sh. D. Lingappa had reported for duty on 01.08.1977. As per the Regulation No. 11(3) of New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulation – *direct recruits shall be ranked interse in the order of merit in which they are placed at the examination or interview on the results of which they are recruited the recruits of an earlier examination or interview being ranked senior to those of the later examination or interview*. Sh. D. Lingappa was promoted as Chargeman during 1993 since he was promoted as Senior Mechanic during 1988. Treating Sh. D. Lingappa as senior to the 1st Party has caused irreparable injury and financial loss. The Union requested to rectify the mistake vide letter dated 24.02.1995, Management failed to take any action. The Management was duty bound to effect promotion according to seniority and take immediate steps to promote the 1st Party retrospectively from the date on which Sh. D. Lingappa was promoted as Senior Mechanic in the year 1988. But the mistake that was done by the 2nd Party has continued without justification. The action of the management is unjust and case of victimization.

3. The 2nd Party in its counter statement contends that the 1st Party and Sh. D. Lingappa were selected against the post reserved for SC along with 5 candidates under UR Post. The seniority of employees borne under Work Charge establishment is determined in accordance with the provisions of CPWD Manual Volume-III. According to para 9.04 Rule No. 2 the seniority in a particular category shall be reckoned from the date of continuous service in that category. Based on this rule the seniority of the PACMs selected on 28.07.1977 was fixed and Sh. D. Lingappa who joined service on 01.08.1977 got higher position in the seniority list than the 1st Party workman. The seniority of W.C Establishment Employees for the purpose of their promotion is considered on the length of service in a particular grade and not on the rank obtained in the selection list. The Seniority of PACM selected on 28.07.1977 was fixed and notified to the employees from time to time and no objection was filed by the 1st Party about the seniority at any point of time.

4. It is the further case of the 2nd Party that the W.C Establishment of the Port were transferred to Regular Establishment w.e.f 21.12.1979 vide order No. 3/34/Adm.1 dated 27.12.1979 of Chief Engineer and Administrator, NMP Panambur. Consequently, the seniority position existing as on 27.12.1979 under W.C Establishment was maintained for their future promotion. Sh. D. Lingappa's promotion as Senior Mechanic under Regular Establishment w.e.f 05.09.1988 is based on the seniority of PACMs is correct since he remained senior to 1st Party in the grade of PACMs under Regular Establishment also. No objection was filed by the 1st Party about the seniority. The NMPT Employees (Recruitment, Seniority and Promotion) Regulation 1980 came into force and made applicable to the employees of the 2nd Party w.e.f 01.04.1980 therefore it will apply only for the said recruitments made under the said regulation on or after 01.04.1980 and will not apply to the appointments made prior to 01.04.1980. The further promotion of Sh. D. Lingappa as Chargemen (W.S) based on his seniority in the grade of Senior Mechanic (W.S) was strictly as per NMPT Employees (Recruitment, Seniority and Promotion) regulation 1980. At that time also 1st Party did not raise any objection. Hence, action of the 2nd Party in fixing the seniority of the Work Charged employees as per the provisions of C.P.W.D Manual Volume-III is correct and justified. Real error in fixing the seniority if any, shall be by the affected employees at the beginning of the service. If the claim is made after substantial loss of time it can be considered if only it does not affect others employees. If the claim of the 1st Party is allowed to consider him as senior to Sh. D. Lingappa with retrospective effect, it will have serious repercussion on the seniority of other employees in the other category and will have financial implication on the 2nd Party. The 6 other employees whose seniority will be affected are not made parties to this dispute. The 1st Party has no legal claim for promotion before Sh. D. Lingappa gets promotion. There is no substance in the claim of the 1st Party.

5. Both parties have adduced evidence and place their arguments.

6. On behalf of the 2nd Party their Office Superintend was examined as a witness and documents Ex M-1 to Ex M-9 are marked. Out of them crucial documents are Ex M-1 and Ex M-2; Ex M-1 is the Memorandum dated 29.07.1977 whereby the candidates are offered temporary post of Pump Attendant cum Mechanic the name of Sh. D. Lingappa is placed at Sl. No. 7 whereas the 1st Party name is placed at Sl. No. 6 which corroborates the contention of the 1st Party that he had fared well in the merit list. But at Ex M-2 which is an order of appointment, the name of Sh. D. Lingappa is placed above the name of the 1st Party workman, the reason for this change of seniority is well explained in the pleadings

of both parties. It is undisputed that, Sh. D. Lingappa reported to duty earlier to 1st Party workman. It is shown by the 2nd Party that the appointments prior to 01.04.1980 were governed by the provisions in C.P.W.D Manual Volume-III and not in accordance with the New Mangalore Port Trust Employees (Recruitment seniority and promotion) Regulation 1980. If the said regulation was given retrospective effect, covering the employees of erstwhile Work Charged Establishment then there was scope for the 1st Party to insist on considering his seniority on the order of merit. Moreover, the parties who will be affected by disturbing the seniority list at this length of time are not parties to this Industrial Dispute. He himself as produced the seniority list as on 01.07.1979 which is marked as Ex W-2. He accepted his first promotion to the Post of Senior Mechanic (Water Supply) vide order dated 05.03.1994 as at Ex W-3, subsequent seniority list of 01.07.1984 is as at Ex M-7. On the top of above all, there is no proof at this point of time to uphold his contention that he merited above Sh. D. Lingappa. The point for reference framed would sound that he is denied promotion as Senior Mechanic, virtually it is not so. He has been promoted as Senior Mechanic (W.S) w.e.f 05.03.1994. Though very framing of the point for adjudication is not proper, both parties have placed their pleadings and evidence knowing fully the rival case. The claim of the 1st Party lacks merits and there is no justification in the claim of the 1st Party that he ought to be considered for the post of Senior Mechanic (W.S) w.e.f 05.09.1998.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 02nd August, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1502.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 54/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल-30012/16/2002-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2002) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 13.08.2019.

[No. L-30012/16/2002-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST AUGUST 2019
PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 54/2002

I Party
Sh. K.C Veerabhadrachari & 07 Ors,
S/o Chamundachari,
No. 365, A, Narayanapura,
Doorvaninagar Post,
Bangalore - 560016.

II Party
The Plant Manager,
LPG Bottling Plant,
Hindustan Petroleum Corp. Ltd.,
3&S, Whitefield Rd.,
Mahadevapura Post,
Bangalore - 560048.

Appearance

Advocate for I Party : Mr. V.S. Naik

AWARD

The Central Government vide Order No.L-30012/16/2002-IR(M) dated 17.09.2002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether it is justifiable on the part of Hindustan Petroleum Corp. Ltd., of deny work of S/Shri K.C. Veerabhadrachari, T.R. Venkatachalapathi, S.M. Chandrappa, M. Aswathnarayana, Venkataswamy,K. Munavar, J.C. Subramani and Krishnappa w.e.f 01.03.2001? If not, to what relief the workmen are entitled to?"

1. The case of the 1st Party workmen is, they were working with the 2nd Party for the period ranging from 6 to 19 years. The 2nd Party is a Government of India undertaking engaged in Refining and Distribution of Petroleum Products; they have established Zonal Office, Regional Office, Terminal Office, Depots, LPG Plant, Training and Experimental Stations at various parts of the Country and has adopted Contract Labour System. The 1st Party workmen were appointed by the contractor under the direct supervision of the Corporation. Though they were termed as contract workers their nature of work was similar to that of the work carried out by regular employees of the Corporation like, stacking of cylinders, removing excess/under filled cylinders from the conveyor, transferring defective cylinder to evacuation stand, placing empty cylinders on the platform for filling, removing empty cylinders from stand and placing them on platform scales for filling, destacking of full cylinder and placing it on conveyor and weighing of the cylinders etc. Though they worked for several years, the Corporation did not absorb them into regular cadre. Writ Petitions filed by similarly placed employees seeking abolition of the Contract Labour and regularisation of service of these workmen was disposed off on 23.08.1999 directing the Central Government to take decision under section 10 of the Contract Labour Regulation and Abolition Act, 1970. The service of the concerned workmen was to be continued till such decision was taken. Vide order dated 01.03.2001 the Government of India prohibited the Contract Labour which the 1st Party workmen and similarly situated worked were performing under the 2nd Party. Upon abolition of the Contract Labour the 2nd Party sought to terminate the service of the 1st Party workmen. In the circumstance they moved to Hon'ble High Court in W.P No. 18456-18464/2001 (L-RES). The Hon'ble High Court ordered the 2nd Party to continue the service of the 1st Party workmen till decision is taken by the Management. In the light of the decisions reported in AIR 1995 SC 1893 ILR 1998 (1) KAR 461. The order was challenged by both parties and the Writ Appeals were disposed off with direction to the parties to work out their remedies. Immediately the 2nd Party dispensed with the service of the 1st Party workmen. The contractor was interposed for the purpose of supply of contract labour for the work of establishment; the contractor was a mere camouflage. The 1st Party workmen had to be treated as employees of the principal employer and their service is required to be regularised. The action of the 2nd Party in dispensing with the service of the 1st Party workmen who had continuously served for several years is unjust and illegal. They are entitled for reinstatement with all consequential benefit. The last contractor namely Sh. Raja disappeared; thereafter the Management continued the service of the 1st Party workmen and others. From 01.02.1999 they worked directly under the control and supervision of the 2nd Party. Their termination is in violation of the mandatory provisions of the section 25-F of the I.D Act.

2. The 2nd Party in their counter statement contends that, the Corporation has its own Rules and Regulations with regard to recruitment. They have to follow presidential direction for reservation of SC/ST and OBC category. Any vacancy in non-management category has to be certified to the Local Employment Exchange; selection is made from amongst the candidates sponsored by the Local Employment Exchange on merits, subject to fulfilling of the recruitment criteria of the Corporation including Medical fitness etc., other source of recruitment are tapped only when Employment Exchange issues a non-availability certificate. The eligibility norms for the post of General Workmen are minimum qualification of S.S.L.C Pass and an age of 25 years (relaxable by 5 years for SC and ST and 3 years for OBC). The 1st Party workmen are never engaged by the 2nd Party directly at any point of time, they are the employees employed by the contractor. The 2nd Party cannot insist the contractor to engage any specific person to carry out the activities, they are hired by the contractor for miscellaneous work and they are not the employees of the principal employer. In the Writ Appeal the Hon'ble High Court directed the parties to agitate before the Industrial Tribunal under section 10 of the I.D Act. They had engaged the service of the contractor to carry out miscellaneous job and not for performing regular activities which the regular employees of the Corporation are performing. They cannot be appointed under regular employment in violation of the Recruitment Policy of the Corporation. They are not entitled to any relief as claimed by them.

3. On behalf of the 2nd Party the Plant Manager was examined as MW-1 and rebuttal evidence was adduced by one of the 1st Party workmen on behalf of other workmen, five documents are marked for him as Ex W-1 to Ex W-5. The affidavit evidence of both of them is mere reiteration of their respective statement. MW-1 is the present Plant Manager of the 2nd Party who is recently appointed and definitely lacks personal knowledge of the disputed facts. However, it was

brought forth during his cross examination that, 1st Party workmen were working at the Plant where about 50 to 55 permanent employees were engaged…. they were working under 2-3 contractors, one among them was Raja, who ran away from the job. They could not trace him and his whereabouts. As Raja was not available, they had to pay wages to the 1st Party workmen directly…. they did so under the direction of the High Court.

4. During the cross examination of WW-1 following emerged,

That the Management was engaging the contractors, getting work of House Keeping and other miscellaneous work done through them… his affidavit averment claiming that he joined the service of the Management through contractor is correct. One Mr. Raja the contractor for the Management was supervising the work…they continued to work as contract workers under different contractors… the service of the 1st Party workmen was terminated in the year 2001 after abolition of Contract Labour…sometimes they were working along with the permanent employees.

5. The 1st Party seek to pass award as per the terms of the Award passed by this Tribunal in CR No. 178/1997 dated 26.09.2006 between Sh. Shivanandaiah and others vs The General Manager HPCL, in the said case, while the reference was still pending adjudication the workmen were terminated after contract system was abolished by the Central Government and each of them had filed separate complaint. On contest, the reference was adjudicated as below:

The management is directed to reinstate the first party workmen in service with 50 per cent of the back wages (last drawn wages) w.e.f. 23.05.2002 till the date of reinstatement and shall regularize the services of the first party workmen w.e.f. the date of publication of this award, paying them benefits of services at par with the permanent employees working under it. Accordingly, Complaint No. 1/05 to 8/05 are allowed and termination orders dated 23.05.2002 passed against the first party workmen are hereby set aside and reference is disposed off. Copy of the award be kept in Complaint No. 1/05 to 8/05. No costs.

6. The 2nd Party challenged the above award before the Hon'ble High Court but without any result. Sh. VSN for the 1st Party submits that in the present case also award may be passed on the same line. It is the further contention for the 1st Party workmen that since worked on par with the permanent workmen and the work which they were discharging is perennial in nature, even after the contractor Mr. Raja absconded their service was continued, they have to be treated as employees under the direct employment of the 2nd Party and the contract if any was sham and this Tribunal has the power to adjudicate the dispute as per the law laid down by the Apex Court in the case of Steel Authority of India (2001-II-LLJ-1087 Para 119(5&6).

7. Another judgment of the Apex Court which is stressed upon by the 1st Party is Gujarat Electricity Board vs Hind Mazdoor Sabha (1995) 5 SSC 27 which held that once the contract labour is abolished and the services of the contract workers are terminated even an individual workman can raise an Industrial Dispute. In the instant case the 1st Party workmen collectively raised the dispute which is in the nature of Industrial Dispute defined under section 2-K of the Act.

8. In reply learned counsel for the 2nd Party points towards the admission that was extracted during the cross examination of WW-1 wherein he admitted, that the 1st Party workmen joined the service of the Management through contractor as casual labourer and further worked under different contractors and applications were not called for through advertisement by the 2nd Party. According to them in the absence of Appointment Order or Termination Order even if the workmen continued to work and receive wages (after the contractor disappeared) with the 2nd Party that was because of the direction of the Hon'ble High Court. There is no employer employee relationship between the parties, the workmen were appointed at the choice of the contractor and the Company had no say in the matter. Once the Government of India issued notification prohibiting the employment of contract labour and the services of the workmen was terminated by issuing notice, the workmen will have no right to claim reinstatement as regular employees, they were hired to do miscellaneous work. They have engaged permanent employees for carrying out day to day activities of filling of L.P.G Cylinders at the plant and miscellaneous activities like House Keeping, Stocking of Cylinders etc., were carried out on contract basis. The service of the contractor was not engaged for performing regular activities which was carried out through regular employee of the 2nd Party. They are engaged to carry out miscellaneous jobs. However, in case their names are sponsored by the Local Employment Exchange against the 2nd Party vacancy notification in future and if the workmen qualify to the requirement norms those candidatures will be considered along with others on merits.

9. There is no gain say to the procedure of recruitments at the 2nd Party which is a Government of India undertaking, is as per recruitment rules applicable to them. None of the Superior Officers in the 2nd Party can violate the Terms and Conditions for appointment to a vacant post. At the outset I have to say that the Award passed by this Tribunal in C.R No. 178/1997 cannot be adopted in its spirit in the present case for the simple reason that the employees therein were still on the rolls of the 2nd Party when they raised the dispute. They raised the Industrial Dispute seeking regularisation of their service consequent upon the cancellation of the contract system in the 2nd Party vide notification of the Central Government. The 2nd Party as per the orders of the Hon'ble High Court had continued those workmen and in light of the notification of the Central Government dispensed their service which led to each of them in filing complaint under section 33-A of the Industrial Dispute Act. There was evidence before the Tribunal that those workmen were performing the duties as that of the permanent employees. The workmen had under gone safety training and issued

Certificates in that regard. That was one of the factors that weighed upon this Tribunal to hold that they were carrying the work of perennial nature which was performed by the workmen therein. But here is the case where there is clear admission that the workmen were appointed by the contractor and their work was supervised by the contractor. They have produced Photostat copy of the Benefit Payment Docket from the Employees State Insurance Corporation in favour of the workman K. C Veerabhadrachari, the statements of EPF deductions wherein the name of the employer is shown as Handling Contractors and others along with the seal of the 2nd Party for the period April 1989 to 31st March 1990, Photostat copy of the Muster roll of the 2nd Party for the Month of February.

10. Though the award is passed by this Tribunal in C.R No. 178/1997 holding that the contract between them and the contractor was not genuine which is endorsed by the Hon'ble High Court, the difficulty to award similar relief in the present case is, they raised the dispute subsequent to their termination on 01.03.2001. To reinstate them into their original post is not possible, firstly for the reason that baring one all others have crossed the age of superannuation, the vacancy in which the 1st Party workmen served is presently not in existence and to order for reinstatement to the regular post overlooking the recruitment policy is not legal. Secondly the reference order is dated 17.09.2002 the 1st Party workmen appeared through their counsel before this Tribunal on 15.11.2002 but filed the claim statement on 16.06.2004. That would suggest that there was no pressing need for them for reinstatement. It surfaces from the evidence of WW-1 that their service was protected after the abscondence of the contractor Raja from 1999 onwards till the same was terminated in the year 2001. Since it is no body's case that while dispensing their service, no compensation was paid to them for the past service rendered by them, it amounts to violation of the mandatory procedure contemplated by section 25-F of the I.D Act.

Since, the 1st Party workmen have not furnished the number of years each of them worked with the 2nd Party on an approximation it may be favourably presumed that they worked with the 2nd Party directly for about 4 years (though under the orders of the Hon'ble High Court). Their past service under the contractor came to an end by his disappearance without settling their terminal benefits. An arithmetical calculation of retrenchment compensation as contemplated by section 25-F of the I.D Act fails to meet the situation, in view of the depreciation of the value of the money from 2001 onwards till now. Under the circumstances in my considered opinion monetary benefit proportionate to the retrenchment compensation which they would have been otherwise entitled would serve the ends of justice being met. I am of the considered opinion that Rs. 50,000/- (Rupees Fifty Thousand Only) as compensation to each of the workmen towards their past service would do complete justice. The workman at Sl. No. 3 is no more and his legal heirs are on record and they are entitled for the benefit that falls to the credit of deceased workman Sh. S.M. Chandrappa at Sl. No. 3.

AWARD

The reference is accepted.

The action of the 2nd Party in denying the work to Sh. K.C. Veerabhadrachari, T.R. Venkatachalapathi, Late S. M. Chandrappa, M. Ashwathanaryana, Venkataswamy K, Munavar, J.C. Subramani and Krishnappa w.e.f 01.03.2009 without compliance of the mandatory procedure contemplated by section 25-F of the I.D Act is not justified.

The 2nd Party i.e. H.P.C.L is directed to pay monetary compensation of Rs. 50,000/- to each of the workman within 60 days from the date of publication of the award in the official gazette failing which the amount shall carry simple interest of 6% per annum. The class-I legal heirs of deceased workman Sh. S.M. Chandrappa at Sl. No. 3 are entitled to receive the above amount jointly.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 01st August, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1503.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 116/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/35/2007-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1503.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 116/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 13.08.2019.

[No. L-29012/35/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 02ND August 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 116/2007

I Party
Sh. Basavaiah,
S/o Sh. Doddarangaiah,
Residing at Hosadurga Post,
Kodihalli Hobli,
Kanakapura Taluk,
Rural District
BANGALORE - 562117

II Party
The Managing Director,
Mysore Minerals Limited,
No. 39, M.G. Road,
BANGALORE - 560001.

Appearance

Advocate for I Party : Mr. Shankarappa

Advocate for II Party : Mr. T. K. Vedamurthy

AWARD

The Central Government vide Order No.L-29012/35/2007-IR(M) dated 22.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of M/s Mysore Minerals Ltd., in imposing the punishment of dismissal from the services on Sh. Basavaiah, Ex-Mazdoor, Katageri Dolamite Quarry of Mysore Minerals Ltd. w.e.f. 03.02.2000 is legal and justified? If not, to what relief the workman is entitled?"

1. The Case of the 1st Party workman is, he joined the service of the 2nd Party at Nidigal Granite Quarry / 2nd Party as Mazdor in 1986, and thereafter served continuously upto 04.03.1996, his service was confirmed on 05.05.1987. On 04.03.1996, he met with a vehicular accident while commuting to the place of his work; he was seriously injured and treated in the Hospital as outpatient from 04.03.1996 to 12.03.1996. He was taken to duty at Kolagondanahalli Granite Quarry, he was transferred to Nidigal. Thereafter, vide letter dated 06.09.1999, he was called upon to report to duty at Kattigere Dolomite Quarry on 13.09.1999. When he went to report at Kattigere Dolomite Quarry, the Manager refused employment, prior to refusal of employment no Charge Sheet was issued and no enquiry was held. His repeated representations requesting for permission to report to duty have not ended in any result. Due to the illegal action of the 2nd Party, he along with his family members deprived from livelihood.

2. The 2nd Party in their counter statement, instead of meeting the claim allegations made out a new case. The counter statement is so drafted as to contradict the allegation that, at the time of joining service in the year 1986 the 1st Party had furnished his age as 30 years; he was subjected to medical examination and found that he reached the age of superannuation and he is not allowed to work after 03.02.2000.

3. The 1st Party workman examined himself as WW-1, his documentary proofs are, Wage Slip and the Termination Letter. During his cross-examination, 2nd Party gave a go by their own case (as pleaded in their statement) and made out a fresh case that it was a case of unauthorized absence since, 15.02.1999 and notices were issued to him to report to duty; since, he failed they gave paper publication in a newspaper dated 23.12.1999; since, he did not appear they served the dismissal order in the year 1999.

4. The 2nd Party examined their Assistant Manager as their witness. The witness in his affidavit evidence avers to the facts, controversy to the case made out by the 2nd Party during the cross-examination of the workman. The case made out at this stage is, that Medical Examination was conducted on the 1st Party, as per the report of the Doctor he was not fit for hard work and he has been terminated from service. He has produced the copies of the call notices and the paper publication and the Termination Order dated 03.02.2000. My Learned predecessor in Office, vide order dated 08.09.2014 allowed the reference and ordered back wages at 30% from the date of reference till his date of superannuation etc.

5. The 2nd Party challenged the Award before the Hon'ble High Court, the Hon'ble High Court quashed the Award, remanded the matter for fresh adjudication.

6. Thereafter, notice was issued to both Parties, in response to the notice 1st party workman appeared through his counsel. Submission was made at the Bar on behalf of advocate Sh. TKV undertaking for the 2nd Party and time was sought for cross-examination of WW-1. On that day, case was adjourned on cost of Rs. 600/- (six hundred rupees) and was posted for cross-examination of WW-1 on 30.04.2019; on the adjourned date nobody turned up for the 2nd Party. Thus, matter came to be reserve for award.

7. The 2nd Party have not disputed the identity of the 1st Party workman as their former employee. The Termination Order / Ex W-6 goes to show that, he remained unauthorisedly absent from duty w.e.f 16.02.1999; Call Memos dated 26.08.1999, 06.09.1999 and 24.09.1999 were issued, but he remained absent unauthorisedly; Domestic Enquiry was ordered to be held on 30.11.1999 by appointing Enquiry Officer; Enquiry notice dated 13.11.1999 was sent by post; though, he acknowledged the Enquiry Notice he did not attend the enquiry; paper publication dated 23.12.1999 was given but he still remained absent; the unauthorized absence is a serious misconduct as per Clause 11(2)(e) of the Certified standing orders of the Company; habitual absence without leave for more than 10 days attracts penalty as per Clause 11(1) of Certified Standing Orders. Accordingly, dismissal order is passed for the act of the workman staying away from duty unauthorisedly from 16.02.1999.

8. The documentary proof are the copies of the Office memo / Call Notice and the Xerox Copy of the Call Notice alleged to have been published in Prajavani newspaper on 23.12.1999, but these documents were marked with subject to the objection raised by the 1st Party. Without producing the actual newspaper in which the notice was published the 2nd Party has taken it easy to produce a paper clip as Paper publication which cannot be appreciated. Any volume of evidence without the basis of pleading is not evidence in the eye of Law that is the unshaken procedure of Principle of Law. The evidence adduced by the 2nd Party is contrary to their own pleading hence, neither the oral nor the documentary evidence produced by the 2nd Party deserve any credence. Going by the evidence of the 1st Party he is refused employment w.e.f 13.09.1999 that to, when he reported to duty at Kattigere Dolomite Quarry, in obedience to the transfer order issued to him on 06.09.1999. It is only when he raised the dispute the 2nd Party contended that he is terminated from service w.e.f 03.02.2000. Appreciating the evidence of the 1st Party that the termination order since, not preceded by issuing of Charge Sheet, and holding of a enquiry into the charges it is definitely an illegal order in violation of principles of natural justice and deserves to be set aside. Consequently, the workman shall be appropriately compensated for the financial hardship suffered by him.

AWARD

The reference is accepted.

The punishment order passed by the 2nd Party on 03.02.2000 against the 1st Party workman Sh. Basavaiah is set aside.

The 2nd Party is directed to pay him 30% of the back wages, from the date of his dismissal i.e., 03.02.2000 till the date of his superannuation. He shall also be paid terminal benefits admissible to him by treating the above period as his continuous service with the 2nd Party.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 02nd August, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1504.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 12/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/99/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2009) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 13.08.2019.

[No. L-29012/99/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST AUGUST 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 12/2009

I Party	**II Party**
Sh. Purudegowda, S/o Late. Sh. Earegowda, B. K. Hosuru Village, Kenkere Post, Gandasi Hobli, Arasikere Taluk, Hassan District – 573103.	The Managing Director, Mysore Minerals Limited, No. 39, M.G. Road, Bangalore – 560 001.

Appearance

Advocate for I Party : Mr. K.T. Govinde Gowda

Advocate for II Party : Mr. A.K. Vasanth

AWARD

The Central Government vide Order No. L-29012/99/2008-IR(M) dated 02.03.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the punishment of dismissal imposed on Sri Purudegowda with retrospective effect from 15.11.1995 by the management of Mysore Minerals Limited is justified? What relief the workman is entitled to?"**

1. The claim of the 1st Party is, he joined the service of the 2nd Party on 11.05.1982 at its Mining Unit, Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District, as a mining worker under Token No. 143. In the year 1995, he fell ill and couldn't attend his duty but the 2nd Party refused to sanction leave to him. When he approached the 2nd Party he was informed that, due to absence for duty he was terminated from service w.e.f 15.11.1995. Without issuing

Charge Sheet and without conducting enquiry they have orally refused employment; they have terminated him retrospectively from the date of availing sick leave; they have not issued termination order. The termination order is highly illegal and in violation of various provisions of I.D Act.

The procedure contemplated under Rule / Clause 33.0 for imposing major penalties as per Certified Standing Order / Service Rules of the 2nd Party is not followed.

2. The 2nd Party in its counter statement contented that, since, he was found medically unfit in the medical examination he is not allowed to work after 15.11.1995. It was also further contented that the dispute is raised after a delay of considerable length of time. He has already reached the age of superannuation, medically unfit and cannot be reinstated.

It is noticed from the order sheet that, on 15.11.2011, at the request of the 1st Party this Tribunal framed a Preliminary Issue as Follows,

"Whether the Domestic Enquiry conducted by the 2nd Party against the 1st Party is fair and proper?"

Thereafter, no evidence was adduced by the 2nd Party to discharge the burden of proving the issue. In the circumstance vide order dated 28.01.2014, it is recorded that no evidence on Domestic Enquiry is led and posted for production of Charge Sheet and to lead evidence to substantiate the Charge, still the 2nd Party omitted to comply the order. The 1st Party also did not come forward to adduce evidence substantiating claim allegations.

3. In the given circumstance, it is inevitable to hold that the punishment of dismissal imposed on Sh. Purudegowda with retrospective effect from 15.11.1995, by the 2nd Party was not justified.

4. The 1st Party workman who raised the dispute after a delay of 14 years since, did not appear before the Tribunal to adduce evidence justifying his claim for the relief, he is not entitled for any relief in the reference.

AWARD

The reference is rejected

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 01st August, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1505.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 10/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.08.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2018) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Limited and others and their workman, which was received by the Central Government on 06.08.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-10 of 2018

(Under Section 2A of the I.D. Act, 1947)

Parties: Shri Palan Halder,
S/o. Late Jyotish Halder,
122/2, Roy Bahadur Road, Behala,
Kolkata – 700068 …Applicant

- Vs –

M/s. Indian Oil Corporation Ltd. (Marketing Division),
Eastern Region, Indian Oil Bhavan,
2, Gariahat Road (South), Dhakuria,
Kolkata – 700068

2. IBP Company Ltd., Acting through Indian Oil
Corporation (Marketing Division) Eastern Region,
2, Gariahat Road (South), Dhakuria,
Kolkata – 700068

3. IBP Co. Ltd. (An Indian Oil Group Company),
Regional Office, Kolkata,
Shanti Niketan (12th Floor),
8, Camac Street,
Kolkata – 700017 …Opp. Parties

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : None

On behalf of the Opposite Parties : Mr. S.K. Karmakar, Learnd counsel with Mr. R. Talukder, Learned counsel.

State: West Bengal. Industry: Petroleum

Dated: 15th July, 2019

AWARD

This is an application under Section 2A of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947 for convenience) filed by the concerned workman, Shri Palan Halder to set aside his termination order dated 12.09.2008/15.09.2008 as illegal and also praying for his reinstatement with full back wages. The Opposite Party has filed its reply in which the maintainability of application under Section 2A of the Act of 1947 has been challenged on the ground of limitation.

2. When the case is taken up for hearing today, learned counsel for the Applicant is not present, though he was present on the previous date and he is well aware of this date. Learned counsel for the Opposite Party, however, has contended that the Act of 1947 prescribes limitation of only three years to file application under Section 2A. He relied on **Swapan Adhikari** v. **State of West Bengal**, 2014(4) CHN 435(CAL) in support of his contention.

3. Admittedly the termination order was passed on 15.09.2008 and this application under Section 2A of the Act of 1947 was moved on 11th July, 2018, i.e., approximately 10 years from the date of his termination. Section 2A(3) of the Act of 1947 prescribes period of limitation for filing application to challenge dismissal or termination under this section which reads as follows:

> "2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

4. From the above quoted provision it is established that the application under Section 2A of the Act of 1947 can only be filed before the expiry of three years from the date of termination of service which is admittedly not done in the present case.

5. Hon'ble Calcutta High Court in **Swapan Adhikary case** (supra) has held that right conferred under Section 2A of the Act of 1947 lapses immediately preceding the date of three years of the date of dismissal. It has also been held that provision of Section 2A(3) of the Act of 1947 operates independently, no matter conciliation proceedings are pending.

6. In view of above facts and circumstances, I am of the considered view that the application under Section 2A of the Act of 1947 is highly time barred. Therefore, rejected.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 15th July, 2019

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1506.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फैब इरेक्टर्स कॉन्ट्रेक्टर ऑफ नाल्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 16/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. एल-43012/3/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Fab Erectors Contractor of NALCO and their workman, which was received by the Central Government on 09.08.2019.

[No. L-43012/3/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No.16 of 2017

Dated of passing of the award 26.02.2019

Present: Shri B.C.Rath,LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:-

M/s. Fab Erectors, Contractor,
P.O.Box No.23,
P.O. –Nalco Nagar,
Dist-Angul,Odisha …First Party Employer

-Versus-

Bichitrananda Ghadai.aged about 47 years,
S/o. Rama Chandra Ghadai,
Vill/P.O- Chaeakhand, via-Pritipur,
Dist-Jajpur …Applicant-Workman

Appearances:-

For the First Party Management : None

For the 2nd Party workman : Self

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No.L-43012/3/2016-IR(M) dated 10.03.2017 in exercising its authority conferred under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

> "Whether the action of the management of M/s. Fab Erectors,Contractors of Nalco Ltd. in refusing employment to Shri Bichitraanda Ghadei w.e.f.25.8.2015 is legal justified ? If not , to what relief (amount of relief) the workman is entitled to? "

2. The case of the workman as emerges from the statement of claim is that he was under the employment of the 1st. Party Management for more than 18 years till he was removed/retrenched on 25.8.2015 without any reason. During the period of his engagement he was supervising the repair and maintenance of Bowl Mill and R.C Feeder of NALCO, Angul. The 1st. Party Management being a Contractor was entrusted with the repair and maintenance of the said unit. In the month of July,2015 he was asked by the Management to work over time for four hours in a day and he was promised over time wages. When the Management did not pay over time wages he did not agree to work for extra time on 23.8.2015. It is the claim of the disputant workman that when he refused to work over time without extra remuneration the Management did not allow him to work and got cancelled his gate pass issued by the NALCO Authority. According to him he was not given any notice pay and retrenchment compensation by the Management when he was refused employment on 25.8.2015. Hence, he put forth his grievance before the Labour Machinery as well as the Principal employer the NALCO. The conciliation proceeding initiated by the Labour Machinery was failed for non-participation of the Management. Hence, the reference.

3. As the 2nd Party Management did not appear and contest the claim inspite of notice he has been set exparte. The 1st Party workman has adduced oral evidence and filed documents like Xerox copies of the EPF slips, Xerox copy of the entry pass, Xerox copy of the employment card , Xerox copies of the complaints made to the Labour Machinery and original copies of the Wage Slips which are marked as Exts.1 to 5 respectively in order to substantiate its case.

4. In support of his claim the sworn affidavit evidence of the workman is filed under Order 18 Rule 4 C.P.C. which is apparently a repeation of the pleadings advanced in his statement of claim. According to him he was working as Supervisor under the 1st. Party Management to look after the repair and maintenance of the Bowl Mill and R.C Feeder of the NALCO, Angul. The 1st. Party Management being his employer directed him to work over time for four hours in a day. When he did not pay the over time wages he (the workman) stopped to work extra time. It is the claim of the disputant workman that the 1st. Party Management got cancelled his Gate Pass with effect from 25.8.2015 when he refused to work extra time. The conduct of the Management resulted in his retrenchment. As he was not given any notice pay and retrenchment compensation, such retrenchment was in violation of the provisions of 25(f) of the Act. There is nothing substantial to disbelieve the above unchallenged and uncontroverted oral testimony of the disputant workman. Rather his assertions about his employment under the 1st. Party Management finds support from Xerox copies of EPF Slips which is marked as Ext.1, reveal that the 1st. Party Management was depositing Provident Fund contributions in the name of the 2nd. Party workman. Thus the evidence of the 1st Party workman clearly indicates that he was under the employment of the 2nd Party Management continuously and uninterruptedly for more than 240 days in a calendar year preceding to his alleged retrenchment. He is alleged to be in service for about 18 years.

5. Having regard to the illegal retrenchment of the disputed workman and the period for which he had given service, I am constrained to observe that it is a fit case in which the disputant workman is to be reinstated.

The 1st. Party Management is directed to reinstate the workman Sri Bichitrananda Ghadei with immediate effect along with his back wages failing which the disputed workman is entitled to receive interest @ 7.5% per annum on his back wages and such interest is to be calculated from the date of notification of the award.

The reference is answered according.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1507.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रदीप माइनिंग एण्ड कंस्ट्रक्शन (प्रा.) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 86/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/35/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 86/2016) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Pradeep Mining and Construction (P) Ltd. and their workman, which was received by the Central Government on 09.08.2019.

[No. L-29012/35/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,BHUBANESWAR

Industrial Dispute Case No. 86 of 2016

Dated of passing of the award 13.02.2019

Present: Shri B. C. Rath,LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar

Between:

The Management,
M/s. Pradeep Mining & Construction (P) Ltd,
(Contractor of IDC Chromites Mines,Talangi,Sukinda)
At/P.O./P.S.-Chorda, Jajpur Road,
Dist-Jajapur,Odisha,Pin-755019 …First Party- Management

-Versus-

Sri Pratap Mohanta,aged about 40 years,
S/o.Late Meghu Mohanta, Vill-Bandhagaon,
P.O. Damadarpur,P.S.Sukinda,
District-Jajpur,Odisha,Pin-755018. …2nd. Party Workman/Union

Appearances:-

For the First Party Management : None

For the 2nd Party workman : Self

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No,L-29012/35/2016-IR(M)) dated.14.12.2016 in exercising its authority conferred under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947 and the Schedule of the reference is as follows:-

> "Whether it is justified on the part of the workman Shri Pratap Mohanta, not to receive the terminal benefits offered by the contractor M/s. Pradeep Mining and Construction(P) Ltd.,Jajpur Road,Odisha on the ground that he should be paid wages for the period from 07.04.2012 to 04.09.2012 actually not worked ? If not, what relief the workman is entitled to ?"

2. In his statement of claim the 2nd Party- Workman contends that he was working as a Mazdoor in the Chromites Mines of the 1st Party Management from 2.8.1999 continuously and uninterruptedly till he was retrenched from service forcefully on 5.4.2012. According to him he was getting a monthly salary around Rs. 8000/- and his Provident Fund Contribution was deducted and deposited by the 1st Party Management during the period of his employment. It is his claim that on 30.3.2012 he along with other co-workers went to the office of the 1st. Party Management to request to reinstate a worker Sisira Dehury who was retrenched last month by the 1st. Party but the 1st. Party denied and threatened the workman and other co-workers to retrench them if they further request the 1st.Party Management. On 6.4.2012 the Ist. Party Management did not allow him to work on being influenced by his rival group. He was not allotted with any work from 6.4.2012 onwards though, he was present in his place of work. He was not given any notice Pay and Retrenchment Compensation before his forceful retrenchment. Such action of the Management refusing employment to him without compliance of the requirement of Section 25(f) and 25(n) is illegal and unjustified. Further, he has prayed that he shall be reinstated with all back wages and service benefits being treated to have been continuing in service.

3. It is pertinent to mention here that the disputant workman being aggrieved by the terms of the reference of the appropriate Government had approached the Hon'ble High Court of Odisha vide W.P(C) No.22130/2017 for changing the terms and schedule of the reference. The Hon'ble High Court vide its order dated. 30.10.2017 have directed this Tribunal to take the issue of retrenchment and the relief to which the workman is entitled to along with the dispute referred to for adjudication.

4. Since the 1st. Party-Managemet did not appear and contest the claim of the disputant- workman inspite of being noticed, the reference case is heard exparte. During exparte hearing the disputant-workman has filed his evidence in form of sworn affidavit under Order 18 Rule 4 C.P.C. and exhibited documents like copy of his Identity Card issued by the Management, Copies of wage slips, copies of EPF Slips, Copy of Letter dt. 7.6.2012, copy of letter dt. 17.4.2012 of the workman, copy of letter of ALC(Central), BBSR, dated 21.9.2012 addressed to Ministry. Copy of the token issued to the workman which are marked as Exts. 1 to 7 respectively.

5. Keeping in view the terms of the reference as well as the direction of the Hon'ble High Court of Odisha in its order dt. 30.10.2017 passed in W.P.(C) No. 22130/2017 the points for consideration are :-

1) Whether the disputant-workman was retrenched illegally with effect from 6.4.2012 ?

2) To what relief he is entitled to, if his retrenchment was illegal ?

3) Whether it was justified on the part of the workman not to receive the retrenchment benefits offered by the Management on the ground that he should be paid wages for the period from 7.4.2012 to 4.9.2012

6. In his sworn affidavit filed towards his examination in chief the disputant-workman has reiterated the pleadings advanced in his statement of claim. It has been claimed by him that he was working as a Mazdoor under the 1st Party Management continuously and uninterruptedly from 02.08.1999 till he was refused work/employment with effect from 6.4.2012. He has asserted that he was discharging his duty with utmost satisfaction of the Management and he was receiving a monthly salary of Rs. 8000/- . The 1st Party Management was deducting from his salary towards his monthly Provident Fund Contribution. The 1st Party Management refused employment to him at the instance of his rival group working under the said Management. There was no sufficient reason to refuse employment to him which amounted to retrenchment. The said retrenchment was made in violation of the provision of Section 25(f) and as such the same is illegal and unjustified. Hence he has claimed for his reinstatement with back wages and other service benefits. There is nothing substantial in his unchallenged and uncontroverted oral testimony to disbelieve him. Rather, the documents Exts.1 to 7 filed by him reveal that the 1st Party Management has issued Ext.1 the identity card wherein the date of joining of the workman is indicated as 2.8.1999. The wage slips issued in his favour reveal that wages were paid to him by the 1st Party Management. Provident Fund Contribution was deducted from his monthly wages, The representation made by the workman to various authorities further reveal that he put forth his grievances for refusal of employment to him. In the above back drops it can be safely held that the disputant was working as a Mazdoor under the 1st. Party Management continuously and uninterruptedly from 02.08.1999. It is alleged that he was not paid notice pay and retrenchment compensation as required U/s. 25(f) of the Act when he was refused employment on 6.4.2012. Therefore, such refusal of employment amounting to retrenchment was illegal and unjustified and the same was in violation of the provisions of the Industrial Disputes Act.

7. Further, it appears from his unchallenged and uncontroverted pleadings and evidence that other workmen are continuing in their services and there was no justification to refuse work to him, though he was working as a Mazdoor

for more than 11 years continuously and uninterruptedly in the mines of the 1st Party Management. Therefore, it is a fit case wherein reinstatement with all back wages and other service benefits would be the appropriate relief to be awarded to the workman. Hence, the 1st Party Management is directed to reinstate the disputant- workman within two months from the date of notification of the award along with 50% of his back wages failing which the disputant is entitled to interest @ 7.5% per annum on his back wages from the date of this award.

The reference is answered accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1508.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रदीप माइनिंग एण्ड कंस्ट्रक्शन (प्रा.) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 87/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/36/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2016) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Pradeep Mining & Construction (P) Ltd. and their workman, which was received by the Central Government on 09.08.2019.

[No. L-29012/36/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No. 87of 2016

Dated of passing of the award 13.02.2019

Present: Shri B.C.Rath,LL.B.,Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:

The Management,
M/s. Pradeep Mining & Construction (P) Ltd,
(Contractor of IDC Chromites Mines, Talangi, Sukinda)
At/P.O./P.S.-Chorda, Jajpur Road,
Dist-Jajapur,Odisha,Pin-755019. …First Party- Management

-Versus-

Kirtan Mohanta, aged 46 years,
S/o. Bairagi Mohanta, Vill-Ostia,
P.O. Chungudipal, P.S. Kaliapani, Dist-Jajapur,
Odisha,Pin-755028. …2nd Party Workman/Union

Appearances:-

For the First Party Management : None

For the 2nd Party workman : Self

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No, L-29012/36/2016-IR(M) dated.14.12.2016 in exercising its authority conferred under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947 and the Schedule of the reference is as follows:-

> "Whether it is justified on the part of the workman Shri Kirtan Mohanta, not to receive the terminal benefits offered by the contractor M/s. Pradeep Mining and Construction (P) Ltd., Jajpur Road, Odisha on the ground that he should be paid wages for the period from 07.04.2012 to 04.09.2012 actually not worked ? If not, what relief the workman is entitled to ?"

2. In his statement of claim the 2nd Party- Workman contends that he was working as a Driver in the Chromites Mines of the 1st Party Management from 1.10.2006 continuously and uninterruptedly till he was retrenched from service forcefully on 6.4.2012. According to him he was getting a monthly salary around Rs. 8000/- and his Provident Fund Contribution was deducted and deposited by the 1st Party Management during the period of his employment. It is his claim that on 30.3.2012 he along with other co-workers went to the office of the 1st. Party Management to request to reinstate a worker namely Sisira Dehury, who was retrenched by the 1st.Pary Management illegally but the 1st. Party denied and threatened the workman and other co-workers to retrench them if they further request the Management. On 6.4.2012 the Ist. Party Management did not allow him to work on being influenced by his rival group. He was not allotted with any work from 7.3.2012 onwards though, he was present in his place of work. He was not given any notice Pay and Retrenchment Compensation before his forceful retrenchment. Such action of the Management refusing employment to him without compliance of the requirement of Section 25(f) and 25(n) is illegal and unjustified. Further, he has prayed that he shall be reinstated with all back wages and service benefits being treated to have been continuing in service.

3. It is pertinent to mention here that the disputant workman being aggrieved by the terms of the reference of the appropriate Government had approached the Hon'ble High Court of Odisha vide W.P(C) No. 22128/2017 for changing the terms and schedule of the reference. The Hon'ble High Court vide its order dated 30.10.2017 have directed this Tribunal to take the issue of retrenchment and the relief to which the workman is entitled to along with the dispute referred to for adjudication.

4. Since the 1st. Party-Management did not appear and contest the claim of the disputant- workman inspite of being noticed, the reference case is heard exparte. During exparte hearing the disputant-workman has filed his evidence in form of sworn affidavit under Order 18 Rule 4 C.P.C. and exhibited documents like copy of his Identity Card issued by the Management, Copies of wage slips, copies of EPF Slips, Copy of Letter dt. 17.4.2012, copy of letter dt. 17.4.2012 of the workman, copy of letter of ALC(Central), BBSR, dated 21.9.2012 addressed to Ministry, Copy of letter dt. 7.6.2012 of the Management, copy of letter dt. 14.9.2012 of the Management and cop of token issued by the Management which are marked as Exts. 1 to 9 respectively.

5. Keeping in view the terms of the reference as well as the direction of the Hon'ble High Court of Odisha in its order dt.30.10.2017 passed in W.P.(C) No.22128/2017 the points for consideration are :-

1) Whether the disputant-workman was retrenched illegally with effect from 7.3.2012 ?

2) To what relief he is entitled to, if his retrenchment was illegal ?

3) Whether it was justified on the part of the workman not to receive the retrenchment benefits offered by the Management on the ground that he should be paid wages for the period from 7.4.2012 to 4.9.2012

6. In his sworn affidavit filed towards his examination in chief the disputant-workman has reiterated the pleadings advanced in his statement of claim. It has been claimed by him that he was working as a Driver under the 1st Party Management continuously and uninterruptedly from 1.10.2006 till he was refused work/employment till 6.4.2012.He has asserted that he was discharging his duty with utmost satisfaction of the Management and he was receiving a monthly salary of Rs. 8000/- . The 1st Party Management was deducting from his salary towards his monthly Provident Fund Contribution. The 1st Party Management refused employment to him at the instance of his rival group working under the said Management. There was no sufficient reason to refuse employment to him which amounted to retrenchment. The said retrenchment was made in violation of the provision of Section 25(f) and as such the same is illegal and unjustified. Hence he has claimed for his reinstatement with back wages and other service benefits. There is nothing substantial in his unchallenged and uncontroverted oral testimony to disbelieve him. Rather, the documents Exts. 1 to 9 filed by him reveal that the 1st Party Management has issued Ext.1 the identity card wherein the date of joining of the workman is indicated as 1.10.2006. The wage slips issued in his favour reveal that wages were paid to him by the 1st Party Management. Provident Fund Contribution was deducted from his monthly wages, The representation made by the workman to various authorities further reveal that he put forth his grievances for refusal of employment to him. In the above back drops it can be safely held that the disputant was working as a Driver under the

1st. Party Management continuously and uninterruptedly from 1.10.2006. It is alleged that he was not paid notice pay and retrenchment compensation as required U/s. 25(f) of the Act when he was refused employment on 6.4.2012. Therefore, such refusal of employment amounting to retrenchment was illegal and unjustified and the same was in violation of the provisions of the Industrial Disputes Act.

7. Further, it appears from his unchallenged and uncontroverted pleadings and evidence that other workmen are continuing in their services and there was no justification to refuse work to him, though he was working as a Driver for more than 5 years continuously and uninterruptedly in the mines of the 1st. Party Management. Therefore, it is a fit case wherein reinstatement with all back wages and other service benefits would be the appropriate relief to be awarded to the workman. Hence, the 1st Party Management is directed to reinstate the disputant- workman within two months from the date of notification of the award along with 50% of his back wages failing which the disputant is entitled to interest @ 7.5% per annum on his back wages from the date of this award.

The reference is answered accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1509.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स बिसरा स्टोन लाइम कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 3/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. एल-29011/60/2003-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2004) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bisra Stone Lime Co. Ltd. and their workman, which was received by the Central Government on 09.08.2019.

[No. L-29011/60/2003-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No. 3 of 2004

Award passed on 04.02.2019

Present: Shri B.C.Rath,LL.B.,Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:

M/s. Bisra Stone Lime Co. Ltd.,
Birmitrapur …Ist. Party Management

-Versus-

The Secretary Gangpur Labour Union,
P.O. Birmitrapur, Dist-Sundargarh …2nd. Party Workman

Appearances:

For the First Party Management : Sri S.N. Tripathy, Dy. Manager (P)

For the 2nd. Party workman : Sri B. Panigrahi, Dy. President.

AWARD

The Government of India ,Ministry of Labour have referred a dispute in exercise of its authority under Section 10 of the Industrial Disputes Act,1947 (herein after referred to as the Act.) vide order No. L-29011/60/2003-IR(M) dated 05.02.2004 for its adjudication and the schedule of the reference runs as follows:-

> "Whether the demand of the Gangpur Labour Union, Birmitrapur demanding exgratia payment for the accounting year 2001-2002 @ Rs.1300/- to 1351/- employees at par with the employees who had been paid by the Management of B.S.L. Co. Ltd., Birmitrapur as exgratia @ Rs. 1300/- to 144 employees is justified ? If not, what relief the workmen are entitled to ?"

2. The case of the 2nd party Union as emerges from its statement of claim is that the Ist. Party Management is an Industry under the control of Ministry of Steel, Government of India and it has mines of Lime Stone and Dolomites at Birmitrapur District Sunderagrh, Odisha. In the financial year 2001-2002 the Management Company declared an advance of Rs.1300/- vide its letter Reference No.33/2451 dated 9.10.2002 to its workmen who were not eligible to receive bonus for the said financial year subject to the proposal being approved by the Board. In that view of the matter 144 employees out of total strength of 1495 employees were paid Rs.1300/- each. In the next financial year the said amount paid to144 employees was converted into exgratia payment which was opposed by certain sections of the workmen on a contention that the Management can not discriminate the workmen and apply two set of rules to them. The lump sum amount granted towards exgratia should have been granted to all the employees who were on Pay Roll as on 31.3.2002. The Management has no authority to differentiate the workmen to divide them in two set of groups and apply two different financial benefits to them. As per the settled principles of law all the workmen should be treated in equal manner and they were entitled to receive exgratia payment sanctioned from time to time. Such decision of the Ist. Party Management was challenged before the Labour Machinery which has ultimately led the present reference as mentioned earlier. It is the prayer of the 2nd party Union that award should be given directing the Management to make payment of exgratia to all other deprived employees numbering 1351 for the year ending 2002.

3. The Management has resisted the Statement of Claim taking a stand in its Written Statement that the dispute raised by the 2nd. Party Union is not maintainable in the eye of law in view of a settlement reached out between the Management and the Union "Khani Mazdoor Sangha". The above Union was having support of the majority of the workers working in the Ist. Party Management and the same Union has been recognised by the Management whereas the 2nd. Party Union is a minority Union. As per the demand of the recognised Union for payment of bonus a settlement was worked out between the said Union and the Management before Labour Machinery whereby it was agreed that bonus @ 8.33 would be paid for the year ending 2001-2002 on or before 11.10.2002 to the workmen who were entitled to receive for the bonus. The Workmen, who were not entitled to the bonus would be entitled to receive Rs. 1300/- as an exgratia subject to the same being approved by the Board. Accordingly a settlement was drawn and executed. The Management had never differentiated or treated the workmen differently. Such payment of exgratia being made on the basis of a settlement, the 2nd Party Union has no cause of action or right to raise any Industrial Dispute in that regard. In view of the settlement reached out between the Management and the recognised Union and payment of bonus to the employees/workmen who were eligible or entitled to such bonus and payment of exgratia of Rs.1300/- to other set of workmen who were on Pay Roll of the Management and not entitled to Bonus, the dispute raised by the 2nd. Party Union has no merit for consideration and the same is liable for rejection.

4. On the aforesaid pleadings of the parties the only issue for consideration is :-

> Whether the Employees/Workmen numbering 1351 were entitled to receive Rs.1300/- each as an exgratia at par with the Employees who had been paid such exgratia by the Management in the financial year 2001-2002 ?

5. The parties to the dispute have not preferred to adduce any evidence either oral or documentary in support of their respective claims except advancing an argument on their pleadings.

No serious dispute has been raised by the 2nd Party Union in regard to the settlement reached out between the Ist. Party Management and the Union in the name and style of "' Khani Mazdoor Sangha". The said Union is pleaded to have been recognised by the Management and no serious dispute has been raised by the 2nd Party Union on such pleading. It appears from the pleadings and argument advanced by the parties as well as from the copies of Settlements filed along with the statements that it was agreed that the Management would pay bonus @ 8.33 to all its employees who were eligible to statutory bonus. As per the said settlement the Management further agreed to make payment of a lump sum exgratia payment of Rs.1300/- only to each employees, who were not eligible to payment of bonus, provided the employees were on Pay Roll of the Management on and before 31.3.2002. The 2nd Party Union has

not challenged the above settlement in any manner. Such settlement having not been challenged in any manner or declared illegal or unjustified the same is binding on the parties. It can not be over sighted that the Settlement was entered into with the recognised Union and this fact is not also challenged by the 2nd Party Union.

6. The terms and conditions of the Settlement spelt out that an amount of Rs. 1300/- should be paid to those employees/workmen of the Ist Party Management who were not entitled to receive bonus as per the provisions of Bonus Act. Further, if the bonus amount was less than Rs. 1300/- the entitled workmen would receive the differential amount of exgratia. In that view of the matter it is hard to believe that the Management had made any un-equal treatment to its workmen. The above practice seems to have been followed even after the financial year 2001-2002. Since the workmen numbering 1351 had received bonus in the accounting year 2001-2002, which was not less than Rs. 1300/- , the amount paid as exgratia to other 144 workmen, who were not entitled to bonus, the demand raised by the 2nd. Party Union has no merit. Those workmen (numbering 1351) did not entitle to exgratia payment in view of the settlement between the parties. Rs.1300/- was paid to other group of workmen as exgratia since they were not entitle to Bonus and they did not receive any amount towards such bonus. Therefore, the Management had not differentiated or treated unequally to its workmen violating any provision of the Industrial Disputes Act. Thus the dispute raised by the 2nd Party Union has no merit for consideration.

The reference is answered accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1510.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सुकिन्दा माइन्स (क्रोमाइट) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 64/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Sukinda Mines (Chromite) and their workman, which was received by the Central Government on 09.08.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri Bijay Chandra Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 64/2017

Date of Passing Order – 12th of February, 2019

Between:

M/s. Sukinda Mines (Chromite),
of M/s. IMFA Ltd.,
At/P.O./P.S.- Kaliapani,
Sukinda, Dist-Jajpur, Odisha …1st Party-Management

(And)

Shri Satyananda Dehury,
At/P.O. – Chingudipal,
Via-Kalarangiatta, P.S.-Kaliapani,
Sukinda, Dist-Jajpur, Odisha …2nd Party-Workman

Appearances:-

None …For the 1st Party-Management

Shri Satyananda Dehury …For the 2nd Party workman

AWARD

The 2nd party workman is present. The Management is found absent on repeated calls. The Applicant-workman is heard on his memo dated 31.10.2018 wherein prayer has been made to allow the workman to withdraw his application preferred U/S 2-A sub clause (2) & (3) of the Industrial Disputes Act, 1947 on the ground stated therein. On perusal of the record it reveals that this Industrial Dispute case has been registered on the filing of the application resorting to the provision as stated earlier and as per the said provision the individual workman can approach directly the Tribunal-cum-Labour Court against the dispute of his dismissal/termination/retrenchment etc. within three years from the date of such alleged dismissal provided the Labour Machinery fails to achieve a conciliation between the parties within 45 days of the dispute being raised before the Labour Machinery. It appears from the statement of claim of the applicant-workman that his service was terminated on 30.4.2010 and as such the dispute of dismissal could have been raised directly before the Tribunal within 30.4.2013. But, the statement of claim is filed on 7.11.2017. The applicant-workman submits that he would raise the dispute before the Labour Machinery of the appropriate Government and he may be allowed to withdraw the application. Having regard to the provisions of law and submission advanced by the applicant-workman the statement of claim stands withdrawn and the Industrial Dispute Case is dismissed without adjudication of the dispute on merit on account of the claim statement being withdrawn.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1511.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ऑयल एण्ड नेचुरल गैस कॉरपोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 6/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2018) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil and Natural Gas Corporaton Limited and others and their workman, which was received by the Central Government on 13.08.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

Appln. (Ref) No. CGIT-2/6 of 2018

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. OIL & NATURAL GAS CORPORATION LTD. & 10 ORS.

1. The Executive Director,
M/s. ONGC, Green Heights,
Bandra Kurla Complex, Bandra,
Mumbai – 400 051.

2. M/s. Arex Travel & Logistics,
12/31, Kashimira Swastika Park,
Chembur, Mumbai – 400 071.

3. M/s. S.N. Travels,
Sai Ashish CHS, Shop No. 28, Bela Road,
Near Bharat Bank, Bhandup West,
Mumbai.

4. M/s. Gurunanak Travels & Tours,
46, Sher-E-Punjab, Andheri East,
Mumbai – 400 093.

5. M/s. J.S. Transport Carriers,
B/24, Amar Gain Society,
L.B.S. Marg, Khopat, Thane West,
Mumbai – 400 601.

6. M/s. Alankar TPT Corp. Ltd.
85/A, Balgram Road, Opp. Bhabha Hospital, Kurla West,
Mumbai – 400 070.

7. M/s. Avtar Travels,
46, Sher-E-Punjab, Andheri East,
Mumbai – 400 093.

8. M/s. D.C. Gupta and Sons,
Gupta House, Sion-Panvel Highway,
Opp. Sanpada Rly Stn., Navi Mumbai.

9. M/s. Buthello Travels,
R/3, Mathur Estate, Premier Road,
Mumbai – 400 070.

10. M/s. Orion Security Solutions Pvt. Ltd.,
5E, 1st Floor, Jungi House, Street-5,
Near Power Station I'll ShahpurJat,
New Delhi – 49.

11. M/s. SISPL,
Mid Commercial Centre, G-3/1,
Cross Road – A, MIDC, Andheri East,
Mumbai – 400 093.

AND
THEIR WORKMEN

The President,
Oilfied Employees Association,
B-506, Sai Vihar, Sector-15, CBD Belapur,
Navi Mumbai – 400 614.

APPEARANCES:

FOR THE EMPLOYER	:	1. Mr. P. A. Deogaonkar, Advocate 2. Mrs. Sanhita Rane Advocate 3. Mr. Mahesh M. Gawas Advocate 4. Mr. Uresh U. Sawant Advocate 5. Mr. J.S. Lall, Advocate 6. Mrs. Sanhita Rane Advocate 7. Mrs. Sanhita Rane, Advocate 8. Mrs. Sanhita Rane, Advocate 9. No Appearance 10. No Appearance 11. No Appearance
FOR THE WORKMEN	:	Mr. S. Mishra, Representative

Mumbai, dated the 31st July, 2019

AWARD

1. This is a reference filed under Section 2-A sub section (2) of the Industrial Disputes Act, 1947 in view of the amendment in the Act No. 24 of 2010.

2. The second party association has filed statement of claim Ex.2 contending therein that logistic is one of the main activity of first party ONGC since bus services are essential for to and fro transportation of ONGC officials between residence and the work centre. There are around 55 buses apart from other logistic equipments being operated on ONGC duties. The staff working on buses are working regularly & continuously for about last 2 decades but their service conditions are not defined. Contractors to the principal employer mainly N.K. Kanoji, DGM unnecessarily got indulge in filing fabricated FIR. Taking the pretext of dispute between Mr. Kanoji and concerned workmen the contractors are not allowing the drivers to individual duties.

3. It is also the case of the concerned workmen that all contracts being operated in the estt. Of ONGC are camouflage as the workers are under the direct control of ONGC officials. There had not been even a single incidence of misbehaving of the drivers during the part of many years and therefore the concerned workmen who are drivers are eligible for benefits from retrospective effects which are available to ONGC regular employees on the equivalent ranks. The second party association is therefore asking to direct the first party ONGC to take the 16 concerned workmen in the reference on job immediately with payment of their dues pending since 20.6.17.

4. The first party ONGC by filing written statement Ex. 21 resisted the claim contending therein that the persons on whose behalf the second party has raised the dispute were never in the employment of first party Corpn. For want of jurian relationship between first party Corpn. and persons concerned in the reference, the present reference is not maintainable.

5. It is also the case of the first party ONGC that the concerned workmen were in the employment of first party No.2 to 11 who were awarded contracts on the basis of limited tender to function transport facilities as well as security services at the given location of first party No.1 Corpn. The said contractors were carrying out the said job by enjoying their own people who were carrying out their respective jobs under the supervision & control of respective contractors. In the absence of employer employee relationship between first party No.1 Corpn. and the persons represented by the second party, the reference itself is not maintainable. The first party No.1 Corpn. had never dismissed, discharged, retrenched or otherwise terminated the services of employees employed by the contractors. As such the reference is not maintainable since the same is contravention of provisions of section 2 A (2) of I.D. Act. The second party association has no locus-standi to espouse the present dispute.

6. It is then the case of the first party ONGC that the core activity of first party ONGC is in the business of tapping in the recourse of oil & natural gas. There exists contracts in the Corpn. to our-source non-core jobs to various private factories by awarding contracts through tendering. While doing so, Corpn. follows laid down tendering procedure and

complied with provisions of relevant enactment such as Contract Labour [Regulation & Abolition] Act, Minimum Wage Act, EPF & MP Act, 1952 etc.

7. According to the first party ONGC, contractors used to provide their own buses, vehicles along with their drivers for pick up and drop facility to the employees of first party Corpn. from residential quarters to work place and vice-versa. Required manpower is employed and deputed by independent contractor under their supervision to perform the terms of contract at first party No.1 estt. On 20.6.17 all of sudden 8 contract bus drivers including one contract security guard, engaged through various contractors participated in illegal strike at the instigation of President of the second party association wherein one of the officer of the first party No.1 was manhandled. For the said act of assault, an FIR was lodged against the President of the second party association & 8 contract drivers and one contract security guard. Now criminal case is pending before court. At the time of agitation contractors bus drivers handed over the keys of the buses to respective contractors and refused to carry out the routine duty. After the said incidence, contractors replaced the drivers who were involved in the said agitation by engaging new drivers. However, the second party did not allow the contractor to change the driver and therefore ONGC deducted the amount from the bill of the contractor for non-compliance of the instructions as per the terms of agreement.

8. It is thus case of the first party that the contracts are not camouflage as the workers are under direct control of the contractors. The contractors engaged their own employees and first party cannot take any disciplinary action against them. On these premise the first party Corpn. has sought dismissal of reference.

9. First party No.2 filed written statement Ex.23 contending therein that the reference is not maintainable since there is no relief claimed against the first party No.2 and that second party association has not specifically pleaded cause of action for the reference. It is the case of first party No.2 that it is into the business of providing transport facilities to various estts. and companies as per their requirements. First party No.2 company owns 48 buses out of which 13 buses are hired for First party No.1 Copn. Duties. Accordingly the company was awarded contract from 9/15 to 9/18. The said contract will come to an end by efflux of time. Company deployed his own buses and employees. Company deployed Mr. Bharat Kasar to drive one bus from Panvel location to ONGC Nava and back. However, Mr. Bharat Kasar along with company drivers engaged through various contractors participated in the illegal strike instigated by second party association. They involved in agitation and manhandled one of the officer of first party No.1 company who lodged complaint / FIR against second party association and the persons involved in the incidence of manhandling. Accordingly proceedings are pending before Panvel Court in this respect.

10. According to First party No.2, Mr. Bharat Kasar was repeatedly called for duty to drive the bus deployed for BPCL contract from Panvel to Mahol and back but he refused flatly to report for duty and demanded the work with First party No.1 Corpn. Since he himself is not reporting at re-deployed place, for his own wrong First party No.2 cannot be held liable. As such the said employee namely Mr. Bharat Kasar is not entitled for any relief claimed. It has thus sought dismissal of reference.

11. First party No.3 filed written statement Ex.27 and resisted the claim on the ground that the reference is not maintainable. It is then contention of the First party No.3 that company is under the business of providing facilities to various estts. Company owns 9 buses. It was awarded contract from 8/15 to 8/18. The said contract will come to an end by efflux of time. Company has deployed his own employees. Company deployed Mr. Sheshrao Ramgude, Mr. Santosh Misal to carry out the bus services from Panel location to ONGC duty place. They along with co-drivers participated in the illegal strike, instigated by second party association and manhandled one officer of the first party No.1 Corpn. who lodged FIR and filed criminal proceedings which are pending.

12. According to the company both the employees were repeatedly called for duty at re-deployed place w.e.f. 27.8.17. They flatly refused to report for duty and therefore for their own wrong first party No.1 Corpn. cannot be held liable. As such concerned employees remained willfully absconding from employment on and from 20.6.17 and hence they are not entitled to any relief.

13. First party No.4 filed written statement Ex.31 contending therein that the reference is not maintainable. Company is into the business of providing transport facilities to various estts. Company owns 13 buses. Company was awarded contract from 1.9.15 to 31.8.18. The contract will come to an end by efflux of time Company had deployed his own employees. Company deployed Mr. Zippar Singh Rajut, Mr. Dilip Chavan, Mr. Prasana Kumar Alhat to carry out bus service from Panvel to ONGC duty place. However on 20.6.17 they along with other co-drivers participated in illegal strike and manhandled the officer of first party No.1 Corpn. who lodged FIR and accordingly proceedings are pending against them before Panvel Court.

14. It is then case of the first party No.4 that the above employees were repeatedly called for duty at re-deployed place but they refused to report for duty and demanded the work with first party No.1 Corpn. As such they are avoiding to report at the re-deployed place and for their wrong first party No.1 Corpn. cannot be held liable. As such concerned employees remained willfully absconding from employment on and from 20.6.17 and hence they are not entitled to any relief.

15. First party No.5 filed written statement Ex.49 contending therein that the reference is not maintainable. Company is into the business of providing transport facilities to various estts. Company owns 29 buses. Company was awarded contract from 9.10.15 to 8.10.18. The contract will come to an end by efflux of time Company had deployed his own employees. Company deployed Mr. Kachrusingh R. Suryavandhi & Mr. Bharat Prajapati to carry out bus service from Panvel to ONGC duty place. However on 20.6.17 they along with other co-drivers participated in illegal strike and manhandled the officer of first party No.1 Corpn. who lodged FIR and accordingly proceedings are pending against them before Panvel Court.

16. It is then case of the first party No.5 that the above employees were repeatedly called for duty at re-deployed place but they refused to report for duty and demanded the work with first party No.1 Corpn. As such they are avoiding to report at the re-deployed place and for their wrong first party No.1 Corpn. cannot be held liable. As such concerned employees remained willfully absconding from employment on and from 20.6.17 and hence they are not entitled to any relief.

17. First party No.6 filed written statement Ex.54 contending therein that the reference is not maintainable. Company is into the business of providing transport facilities to various estts. Company owns 5 buses. Company was awarded contract from 2015 to 2018. The contract will come to an end by efflux of time Company had deployed his own employees. Company deployed Mr. Kasar Pathan Alias Khan to carry out bus service from Ghatkopar to ONGC duty place. However on 20.6.17 he along with other co-drivers participated in illegal strike and manhandled the officer of first party No.1 Corpn. who lodged FIR and accordingly proceedings are pending against them before Panvel Court.

18. It is then case of the first party No.6 that the above employee was repeatedly called for duty at re-deployed place but he refused to report for duty and demanded the work with first party No.1 Corpn. As such he is avoiding to report at the re-deployed place and for his wrong first party No.1 Corpn. cannot be held liable. As such concerned employee remained willfully absconding from employment on and from 20.6.17 and hence he is not entitled to any relief.

19. First party No.7 filed written statement Ex.59 contending therein that the reference is not maintainable. Company is into the business of providing transport facilities to various estts. Company owns 4 Ambulances. Company was awarded contract from 10.6.14 to 30.9.17. The contract will come to an end by efflux of time Company had deployed his own employees. Company deployed Mr. Sunil Suryavanshi to carry out bus service from Panvel to ONGC duty place. However on 20.6.17 he along with other co-drivers participated in illegal strike and manhandled the officer of first party No.1 Corpn. who lodged FIR and accordingly proceedings are pending against them before Panvel Court.

20. It is then case of the first party No.7 that the above employee was repeatedly called for duty at re-deployed place but he refused to report for duty and demanded the work with first party No.1 Corpn. As such he is avoiding to report at the re-deployed place and for his wrong first party No.1 Corpn. cannot be held liable. As such concerned employee remained willfully absconding from employment on and from 20.6.17 and hence he is not entitled to any relief.

21. First party No.8 filed written statement Ex.36 contending therein that the reference is not maintainable. Company is into the business of providing transport facilities to various estts. Company owns 70 buses. Company was awarded contract from 1.10.15 to 30.9.18. The contract will come to an end by efflux of time Company had deployed his own employees. Company deployed Mr. Harshal Garve, Mr. Naushad Patil, Mr. Raju Gedan to carry out bus service from Panvel to ONGC duty place. However on 20.6.17 they along with other co-drivers participated in illegal strike and manhandled the officer of first party No.1 Corpn. who lodged FIR and accordingly proceedings are pending against them before Panvel Court.

22. It is then case of the first party No.8 that the above employees were repeatedly called for duty at re-deployed place but they refused to report for duty and demanded the work with first party No.1 Corpn. As such they are avoiding to report at the re-deployed place and for their wrong first party No.1 Corpn. cannot be held liable. As such concerned employees remained willfully absconding from employment on and from 20.6.17 and hence they are not entitled to any relief.

23. Following issues are framed at Ex.68. I reproduce the Issues along with my findings thereon for the reasons to follow:

Sr. No.	Issue	Findings
1	Whether the Reference is maintainable against the first party corporation ?	No
2.	Whether there exists employer-employee relationship between the persons on whose behalf second party has raised the dispute and first party corporation ?	No
3.	Whether the dispute raised by the second party is an Industrial Dispute within the meaning of section 2 (k) of I.D. Act ?	Yes
4.	Whether the second party is entitled to the relief prayed in statement of claim ?	No
5.	What order ?	As per final order

Reasons

Issue No.1 & 2.

24. Second party association has filed pursis Ex.67 stating therein that the second party association is not required to adduce the oral evidence. As such no oral evidence is adduced by the second party association.

25. Similarly the first party No.1, 5, 2, 3, 4, 6, 7, 8 filed pursis Ex. 69, 70 & 71 respectively stating therein that they do not want to lead evidence.

26. Now so far as contentions go it is the case of the second party workers that they are working regularly and continuously in the estt. of first party No.1 ONGC for the last more than 2 decades. However, there is no document to show that the second party workers are appointed in the estt. of first party No.1 ONGC. We have document to show that there was contract between the first party No.1 ONGC and the first party No.8 company dated 13.10.15 whereby Corpn. hired buses on regular basis for carrying out Corpn. operations confirming to specification as set-forth in the scope of the work. Similarly, there are contracts between first party No.1 ONGC and first party No. 3 dt. 29.5.15. There appears to be contract between party No.1 ONGC and first party No. 4 company dt. 16.10.15 whereby Corpn. has hired buses on regular basis for carrying out Corpn.'s operations. More particularly we have document below Ex.57 / 1 to show that employee namely Mr. Kasar Pathan was appointed as driver purely on temporary basis for the period of 4 months effective from the date of appointment by first party No. 6 company. This appointment letter of one of the concerned employee show that he was an employee of first party No. 6 company that to on temporary basis for the period of 4 months and as such there is no appointment letter from first party No. 1 ONGC to show that the concerned workmen are the employees of first party No. 1 ONGC. Even there is no oral evidence on behalf of the concerned workmen to show that they are working regularly and continuously in the estt. of first party No. 1 ONGC. For want of evidence, it will have to be said that there is no employer employee relationship in between first party No. 1 ONGC and the concerned workmen.

27. It is in that circumstances the first party No. 2 to 8 in the written statement have specifically stated that the concerned workmen were engaged by the contractors of ONGC since first party No. 2 to 8 were awarded contract for the period from 2015 to 2018 and the said contract came to an end by efflux of time. First party No. 2 to 8 are in the business of providing transport facilities. Companies are having their buses which are hired for duty by the first party No. 1 Corpn. and so far drivers are concerned, they are engaged by the contractors. This fact is explicit from the copies of contracts between first party No. 1 Corpn. and first party No. 2 to 8. The appointment letter is very specific to show that one of the concerned employee was appointed by the contractor on temporary basis and as such he was the employee of the contractor whose services to be came an end by efflux of time.

28. It is important to note that as per the contention of first party No. 2 to 8 similar dispute was raised earlier by second party association vide its notice dt. 20.12.17 before conciliation officer for restoration of the duties of the bus drivers in the employment of first party No. 1. After hearing the parties to the dispute the conciliation officer recorded his failure report dt. 14.8.17. Ministry of Labour & Employment, New Delhi vide its order dt. 4.1.18 prima-facie did not consider the dispute for adjudication for the following reasons.

> **"The union agitated against the removal of 8 drivers engaged by the contractors of ONGC. The drivers have been removed from service due to stoppage of Bus services on 20.06.2017 and creation of obstacle for which FIR has been filed against them by the ONGC management. The drivers were not willing to ply any buses other than carrying ONGC officials and the contractors are not ready to engage them on ONGC bus duty in view of FIR. The union is demanding a hike of Rs.22,000/- per month, the management is agreeable for hike of Rs.3,000/-. ONGC being a public utility service, adamant approach of the Union is not acceptable."**

29. As such it appears that Ministry of Labour vide its order dt. 4.1.18 rejected to refer the dispute for adjudication which was in respect of restoration of duties to bus drivers in the employment of first party No. 1 Corpn. The copy of order dt. 4.1.18 is at page 14 below Ex.42 which clearly reads that the drivers are not willing to fly any buses other than carrying ONGC officials. Bus contractors stated that they are ready to engage them on other buses but not on the ONGC buses as the cases filed against them before Panvel court are pending. When the contract was awarded by ONGC, there was no condition put forth by them to engage any particular driver. So it is for the contractor to decide who will fly buses. Contractors are ready to engage the drivers on their buses flying for other estts. In view of that the dispute was treated as closed.

30. On going through the copy of conciliation officer's failure report which is produced below Ex. 52 / 1 & 2, it is clear that during discussions it was transpired that due to stoppage of bus services on 20.6.17 and FIR lodged by ONGC officials, bus drivers numbering 8 engaged by different contractors demanded for restoration of duties. The contractors were ready to give duty on other buses which are flying for other companies and they have not terminated or retrenched the services of the drivers. But the drivers were not ready to do any duty other than driving for the contract buses meant for ONGC.

31. From the facts, it is clear that Ministry of Labour earlier rejected to refer the dispute for adjudication and in view of that the present reference would be barred by principle of estoppel.

32. On going through the statement of claim, it appears to be the contention of the second party association that the concerned workmen are working continuously irrespective of change of contractor. No such evidence is adduced by the second party association. Even there is no evidence to show that the contracts in between first party No. 1 ONGC and first party No. 2 to 8 are bogus contracts. Even in the statement of claim the relief claimed is that the first party be directed to take the 16 workers on job with payment of their dues pending since 20.6.17. But then the fact has been established that the contractors were ready to engage them on other buses but not on ONGC buses as the cases filed against them were pending and the concerned workmen refused or / willfully remained absconding from employment on and from 20.6.17. It will have to be said therefore that the services of the concerned workmen were not terminated / retrenched by the contractors but on the contrary the concerned workmen abandoned the services and refused to render the services on the ground that they wanted to work on ONGC buses only, when infact in the contract awarded by ONGC there was no such condition put forth and it is for the contractor to decide who will work / fly the buses.

33. It is then important to the note that second party association in its statement of claim has not referred to the incident of strike and suppressed the fact. However, in the notes of arguments it is mentioned that there was hard discussions in between N.K. Kanoji, DGM and bus staff. Complaints were lodged. Police arrested the second party workers who were released on bail and the cases are pending before Magistrate Court No. 5, Panvel. Precisely it is the contention of the contractors that since the cases are pending they are not ready and willing to engage the drivers on ONGC duty but they are ready to engage them at other places to which they refused. In the circumstances therefore it appears probable and acceptable that there is no notice of retrenchment given by the contractors to the concerned workmen. The fact remains that the concerned workmen on their won abandoned job / services of the contractors and therefore first party cannot be held liable.

34. So far first party No.1 is concerned, there exists no employer employee relationship between concerned workmen & first party No.1 Corpn. As seen earlier, there is no document to show that the concerned workmen were appointed by the first party No.1 Corpn. Therefore in the absence of employer employee relationship between first party No.1 Corpn. and the persons represented by the second party, the present reference is not maintainable so far as first party No.1 Corpn. is concerned.

35. Learned counsel for first party No.1 Corpn. submitted that the second party has not pleaded about signing of the settlements and therefore the averments / pleadings made by the second party from para – 1 (b) to (f) of the written arguments cannot be considered. In the context, reliance is placed on the decision in case of Shankar Chakraborty V/s. Britannia Biscuits Co. & Anr. – 79 – SC – Page – 1652.

36. Considering all these facts, it has been established that there exists no master & servant relationship in between the first party No.1 Corpn. and concerned workmen. Admittedly therefore the concerned workmen are the employees of the contractors first party No.2 to 8. As such so far first party No.1 Corpn. is concerned the reference is not maintainable. As a matter of fact it has come on record that the concerned workmen have not given the termination letters. They on their own abandoned the services of the contractors and therefore they are not entitled to any relief prayed in the statement of claim. The above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

Issue No.3.

37. So far this issue is concerned, it is the contention of first party No.1 Corpn. that in the absence of disclosure of membership and existence of membership, second party does not have locus-standi to raise the dispute much less and industrial dispute within the meaning of section 2 (k) of I.D. Act. In this respect it appears that the second party association raised the dispute before ALC wherein second party association represented the concerned workmen and ultimately after discussion demand of the union did not reach amicable solution and ended in failure. In view of that necessary certificate u/s. 2 (a) of I.D. act is issued by the authority on the basis of which second party has raised the

dispute u/s. 2 (a) of I.D. Act. All the 16 concerned workmen collectively filed application seeking certificate u/s. 2 (a) of I.D. act which has been granted by ALC on 11.1.18. In view of that it will have to be said that industrial dispute raised by the second party is within the meaning of section 2 (k) of I.D. act. This issue is therefore answered accordingly.

Issue No. 4 & 5.

38. In view of my findings to the above issues, second party association is not entitled to any relief. Reference is liable to be rejected with no order as to costs.

39. In the result, I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 31.07.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1512.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 1/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited and their workman, which was received by the Central Government on 09.08.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Tr. Industrial Dispute Case No. 1 of 2012

Dated of passing of the award 03.07.2019

Present: Shri B. C. Rath,LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:

Management of
Authority of India Ltd,
Rourkela Steel Plant, Rourkela …First Party- Management

-Versus-

Smt. Menaka Mallick,
W/o. Late- P.C. Mllick,
Plot No.884096. …2nd.Party Workman/Union

Appearances:-

For the First Party Management : Sri.R.Mishra

For the 2ndParty workman : Sri N.Mishra

AWARD

The Government of Odisha, Labour and Employment Department have referred an Industrial Dispute between the above named parties for its adjudication vide its order No.11/1(SS)/40/05 2390 Dated-16.03.2006 in exercising its authority conferred under Sub Section (5) of Section 12 read with clause (d) of sub section(1) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

> "Whether the demand of the Deputy General Secretary, Rourkela Mazdoor Sabha, Rourkela for providing employment to Smt. Menaka Mallick, wife of Sri Prafulla Chandra Mallick with effect from 25.6.1997 in SAIL, Rourkela Steel Plant, Rourkela as per clause-3,4,5,1(F) of National Joint Committee Agreement dated.16.05.1995 is legal and/or justified. If not, what should be the details ?"

2. Shorn off the unnecessary details the case of the 2nd Party is that the disputant workman Late P. C. Mallick was employed as a skilled labourer in the Steel Plant of the Management in the year 1988. On 17.5.1993 while he was returning home around 10 P.M. after performing his 'B' shift duty, he met with an accident near the traffic gate of the Steel Plant. He was taken and admitted into the IGH Hospital immediately as an indoor patient as he was unconscious. He was under treatment from 17.5.1993 to 24.6.1997 after such accident. As he was under treatment having met with an accident arising out and in course of his employment, he was paid full wages for the period of disablement i.e. 17.5.1993 to 24.6.97 as per memorandum of agreement(settlement).He was issued with a show cause notice while being continued in medical treatment and as per the standing order of the 1st Party Management he being found unfit medically was discharged from service on 25.6.1997. It is the claim of the 2nd Party that as per the term of service conditions and memorandum of agreement (settlement) executed from time to time between the 1st Party Management and the Union of the employees the 2nd Party Workman is entitled to compensation as per the rules. Besides, one of the direct dependant of such disabled employee is also entitled to be rehabilitated in the service. Accordingly the deceased employee workman and his wife (the present disputant) made a representation to the Management to provide employment to the wife of the disputant workman. When the 1st Party Management neither paid any compensation nor provided any employment to the wife of the disputed workman, he filed a case under Workman Compensation Act bearing No.33/1997 for payment of compensation taking a plea that the disputant workman sustained his injuries being met an accident in course of his employment. The Management contested the case taking a stand that the disputant did not met any accident in course of his employment. Rather, he was suffering from Hypertension with hypertensive retinopathy and he was discharged from the service of the Steel Plant on account of being found medically unfit permanently to perform his duty. After hearing the parties at length the Commissioner for Workmen Compensation directed the Management to pay compensation holding that the workman met the accident during course of his employment. The 1st Party also contested the matter before the Hon'ble High Court . The Hon'ble High Court upheld the order of the learned Commissioner with a modification of compensation amount. It has been pleaded by the disputant that inspite of several representations the authority of the 1st party Management did not pay any heed to provide employment to her under the rehabilitation provisions of the settlement. Hence, her husband i.e. disputant workman raised a dispute before the labour machinery through Deputy General Secretary Rourkela Mazdoor Sabha, Rourkela. As the conciliation proceeding before the labour machinery failed, a reference has been made for adjudication of the dispute as stated in supra. It is pertinent to mention here that the disputant workman Late P. C. Mallick filed the statement of claim along with her wife for her employment under the rehabilitation scheme. While the present reference is pending for adjudication, the disputant workman died leaving behind him his wife(the present disputant) and his children. The disputant being a party to the statement of claim along with her husband has been pursuing the dispute and accordingly she has been shown as a 2nd Party. She is prosecuting the matter as the 2nd Party Union did not take any step after the dispute was referred for a judicial adjudication.

3. The 1st Party Management has contested the claim of the disputant taking a stand that the reference is not maintainable in the eye of law on account of the same being related to a private individual. Neither the original disputant nor his legal successor was a workman of the 1st Party Management when the dispute was initially raised through the 2nd party union. The claim statement having been preferred by an individual should have been out rightly rejected on account of the same being filed by a person other than the Union who had initially raised the dispute. That apart, it is the stand of the Management that the disputant workman did not meet any accident arising out of or in course of his employment. Neither his disablement nor his death was any way connected or linked to his employment. He was suffering from Hypertension with Hypertensive Retinopathy and Hemiphesia with unstable gait for which he was unable to attend his duty and he was availing E.L for a substantial period for which the 1st party management got him examined by a medical board. The medical board found him permanently medically unfit as a result of which he was discharged from service with effect from 24.6.97 as per the term and condition of the standing order of the

Management. According to the Management an employee discharged on medical ground of his disablement due to an accident arising out of or in course of his employment he is entitled to avail a benefit under Employees Family Benefit Scheme. Unless such benefit is being availed of he is not entitled to get rehabilitation assistance as envisaged in the memorandum of agreement. As Late Mallick was discharged being medically unfit due to his suffering of a disease arising in natural course of his life he was not entitled to avail such benefit under Employee Family Benefit Scheme. Hence, his family members is not entitled to get any rehabilitation assistance as per the NJC Agreement. For which neither he nor his wife made any representation to the 1st party Management for appointment of Smt. Mallick under Rehabilitation Assistance Scheme. Clause-3.4.5.1(f),National Joint Committee Agreement dt.18.5.1995 is not applicable to the claim of the disputant since the death or permanent total disablement of late Mallick was not arisen out of any accident held in course of his employment. His suffering/illness was no way connected to his employment or service. The procedure adopted in Workmen Compensation Case and finding thereunder, is no way helpful to determine the fate of the present dispute. Employment to one of the dependant of an employee is not a service condition and any claim in this regard is not sustainable in the eye of law on account of the same being opposed to the norms and mandate of the Constitution. With the above contentions the Management has made a prayer for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled for just and proper decision of the case.

ISSUES

1. Whether the reference is maintainable?
2. Whether Smt. Menaka Mallick is a workman or not?
3. Whether the demand of the Deputy General Secretary, Rourkela Mozdoor Sabha,Rourkella for providing employment to Smt. Menaka Mallick wife of Sri Prafulla Chandra Mallick, with effect from 25..6.1997 in SAIL, Rourkela Steel Plant, Rourkela as per clasue-3.4.5.1(F) NJCA dt.18.5.1995 is legal and/or justified?
4. If not, what should be the details?

FINDINGS

5. The 2nd party workman as well as the 1st Party Management has adduced oral as well as documentary evidence in support of their pleadings. The disputant Smt. Mallick has adduced her oral evidence and filed documents such as copy of accident report dt.17.5.1993, copy of the NJCS agreement dated.18.5.1995 and June 2001, copy of show cause notice of Management, copy of the reply to the show cause dt.11.6.1997, copy of representation of Mallick to provide employment to his wife , copy of the representation of S.K. Mallick and Smt. Mallick dt.5.7.2000, copy of the release order dt.25.6.1997, copy of application dated.11.11.1997, copy of letter dated.8.7.98 of the Union, copy of the award dt.30.3.2000 by the W.C. Commissioner, Rourkela, order of the Hon'ble High Court of Odisha dt.10.5.2000 and order of the Hol'ble High Court of Odisha dt.28.3.2005 which are marked as Exts.1 to 12 respectively to substantiate her claim, whereas the Management has examined M.W.1 and filed documents like Xerox copy of the letter dated.29.5.1997, copy of office order dated.24.6.1997, copy of the report of the Medical Board, Xerox copy of the personal policy circular dt.9.11.1991, copy of the bye law of Rourkela Mazdoor Sangha, Copy of the employees Family Benefit scheme, copy of the cover page of the Medical Treatment book of Late. Mallick, Copy of the NJCS Agreement dt.18.5.1989 and copy of the office order dated.18.11.1989, which are marked as Ext.A to Ext.J, to counter the claim of the disputant.

6. It is to be mentioned here that at the instance of the Management issues regarding maintainability of the reference on grounds of the dispute being not an industrial dispute as defined U/s.2.k of the Act and the disputant being not a workman as defined in Section 2.s of the Act has no right to raise a dispute having been adjudicated and decided by the orders dtated.27.9.2013 and 20.12.2013 of this Tribunal respectively no further finding is required in regard to issue Nos.1 and 2 as well as issue of maintainability of the reference. That apart, it cannot be over sighted that the dispute was initially raised by an Union recognised by the 1st Party Management and the same was prosecuted by the discharged workman and his wife. After death of the said workman his wife is prosecuting the matter. There is no serious dispute that Late Mallick was discharged from his service with effect from 24.6.1997 on the ground of medical unfitness On a mere reading of Section 2.k of the Act, which has defined the term "workman" it is crystal clear that " workman" means any person employed in any industry to do any manual ,unskilled, skilled, technical, operational clerical or supervisory work for hire or reward, whether the terms of employment he express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. Similarly "Industrial Dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which

is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person.

7. It is evident from the pleadings and evidence of the parties that late Mallick was an employee of the 1st Party Management and he was discharged from service on being found medically unfit to perform his duty. Being a discharged workman he cannot be a rank outsider and he is covered by the term "workman" as envisaged in the Act. The dispute involved in the present reference arises out of his discharge from service and claim for rehabilitation of his wife is raised on account of the term and condition of NJC Agreement . Hence, the dispute being related to non-employment of the dependant of a discharged workman inspite of a settlement/agreement between the parties for extending rehabilitation assistance to a family of the workman who met death or suffered from permanent tot al disability in course of his employment is an Industrial Dispute as defined in the Act. It is emerging from the statement of claim as well as from the record that such claim statement was filed jointly by Late P.C. Mallick and his wife i.e. the present disputant. Keeping in view the provisions of Section 10 sub clause(8) the disputant Smt. Mallick can not be out rightly restrained from prosecuting the dispute under the reference and the above aspects have been taken into consideration by the Tribunal while deciding the question of maintainability of the reference on earlier occasion. Similarly, it cannot be over sighted that the dispute was raised taking in to consideration the clause 3.4.5.1(f) of the memorandum of agreement which provides that in case of death or permanent disablement of an employee due to accident arising out and in course of employment, employment to one of his /her direct dependant will be provided. This rehabilitation assistance is in addition to the benefit extended to an employee under the Employees Family Benefit Scheme. Such rehabilitation assistance having been introduced by a memorandum of agreement is a part and parcel of the service condition of an employee of the Management. Hence, the disputant who is the wife is entitled to any employment in the establishment of 1st party Management under the rehabilitation assistance as incorporated in NJC agreement. As such the objection raised by the Management on the maintainability of the reference on the grounds stated above has no merit at all. The other ground of objection as to the dispute having been raised belatedly would be analysed below .

One of the grounds of objection to the claim of rehabilitation assistance is that the workman late. Mallick was discharged from service on being found medically unfit to perform his duty by the Medical Board due to his suffering from disease of Hypertension with Hypertensive Retinopathy and Hemiplegia (Lt) with unstable gait and Sri Mallick is stated to have suffered from the said disease in normal and natural course of his life. He did not suffer from the disease out of any accident arising out of and in course of his employment. His death or permanent total disablement being arisen in normal and natural course of his life no rehabilitation assistance as incorporated in the NJC Agreement can be extended to the disputant or any of his family members. On the other hand, it is the claim of the disputant that her husband suffered from the disease narrated above out of an accident arisen in course of his employment. To substantiate her claim the disputant has adduced oral as well as documentary evidence, the same does not seem to have been demolished by her cross examination. No serious dispute is raised to the effect emerging from her evidence that an award under the Workman Compensation Act was passed in favour of Late Mallick vide Workmen Compensation Case No.33/1997 by the Deputy Labour Commissioner and Commissioner for Workmen's Compensation, Rourkela. The compensation was granted on a finding that Late Mallick sustained head injury on a fall from a cycle inside the factory premises of the Management while returning home after completion of his "B" shift duty and thereafter he became unconscious and he was admitted in the hospital. He continued as an indoor patient for more than four months and thereafter he was under treatment as an indoor patient. It is the assertion of Smt. Mallick that her husband was discharged from service on being found medically unfit while being under treatment. It is not also seriously disputed that compensation of Rs.2,41,992/- along with interest was allowed in favour of late Mallick from 17.5.1993 when he is alleged to have suffered brain injury in course of his employment. The said award was challenged by the Management before the Hon'ble High Court of Odisha vide M.A. No.289/2000 and the award was confirmed with the reduction of the compensation amount. In that view of the matter the stand of the Management that death of Sri Mallick is no way related to the employment cannot be accepted. There is no evidence on behalf of the Management to establish that the disease detected by the Medical Board cannot be related or connected to the brain injury sustained by late Mallick in an accident arising out of and in course of employment. That being the material and evidence before the Tribunal, it is difficult on the part of the Tribunal to hold that disease for which Sri Mallick was found medically unfit to continue in service was occurred to him in normal and natural course of his life. In the above facts and circumstances it can be safely said that Late Mallick suffered from permanent total disablement in an accident arising out of and in course of his employment.

The 2nd point of objection raised by the Management is that Late Mallick had never challenged his discharge from service on medical ground at any point of time and he did not avail the benefit under the Employees Family Benefit Scheme which is usually extended to an employee on his separation from service in the company on account of his death or permanent total disablement. His nominee/employee, as the case may be , on depositing with the company the entire P.F. and Gratuity amount of the employee, would be entitled to monthly wage equivalent to his basic pay + DA last drawn as per the scheme. Such monthly payment shall continue till the normal date on which the employee concerned would be attained the age of superannuation. Since his disablement and discharge from service was not any

way related to his employment neither he nor his family member had applied for to avail such family benefit scheme . Had he availed the above benefit he could have got the rehabilitation assistance as incorporated in the NJC Agreement dt.18.5.1995. On a close reading of the said agreement more particularly clauses related to the rehabilitation assistance as well as the provisions of Employees Family Benefit Scheme it is seen that there is no pre-condition of availing the Employees Family Benefit Scheme to get the rehabilitation assistance .There is also nothing in the said agreement that the affected employee or his direct nominee can not avail one of the two benefits. The employee/his nominee may not ask for or interested for family benefit scheme but , he ma y be interested for rehabilitation assistance. Therefore, the argument advanced on the above contention is not acceptable. More over, it is found that the condition of rehabilitation assistance to an employee met death or permanent total disablement in course of his employment was already there when Late Mallick was discharged from service being found medically unfit. Keeping in view the fact that Late Mallick having suffered a permanent total disablement due to an accident arising out of and in course of employment, one of his direct dependant is entitled to employment in the establishment of the Management. It is not disputed that the Management has not provided employment to any of direct dependant of late Mallick after his discharge from service. In the above facts and circumstance the claim of the disputant Smt. Mallick for rehabilitation assistance can not be out rightly rejected.

8. The next point of objection raised by the Management is that the claim of rehabilitation is not maintainable as it was raised belatedly about ten years after his discharge from his service.. According to the Management no application or representation was ever made before the Management for rehabilitation till the dispute was raised before the labour machinery . Such claim was not raised earlier or soon after the discharge from service since the disease making late Mallick medically unfit was occurred to him in normal and natural course of life and it was not related to his employment. The dispute was raised after an awarded passed under Workmen Compensation Act. There was no credible documents/ materials/evidence to link his permanent total disability to his employment and no credible evidence is emerging to justify the delay in raising the dispute. Relying upon the decisions of the Hon'ble Apex Court in the case of Prabhkar-Versus- Joint Director Sericulture Department and Others in SLP (Civil) No.27080 of 2015. It has been argued that the claim statement of the disputant shall be rejected on account of the dispute having been raised after more than 10 years of the disengagement.

9. The above pleading and argument is countered on a contention that law of limitation is not applicable to the I.D. Act. Rather, Sec.10 sub clause (1) of the Act provides that appropriate Government have authority to refer a dispute for its adjudication at any time, provided the Government is satisfied that a dispute exists between the parties. The dispute having been referred by the appropriate Government the Tribunal has limited scope to question the delay or reject the statement of claim on the ground of delay. Admittedly, there is no provision in the I.D. Act for applicability of the provisions of the Limitation Act. On the other hand, as per the settled principles of the Hon'ble Apex Court though Limitation Act 1963 is not applicable to the reference made under the I.D. Act but, delay in raising Industrial Dispute is definitely an important circumstance which the labour Court must keep in view at the time of exercising its discretion irrespective of whether or not such objection has been raised by either side. (Asst. Engineer, Rajstan State Agriculture Board Sub Division, Kota –Vrs- Mohan Lal (2013) SC 543. Further in the case between Ajib Singh-Versus-Sirhind Cooperative Marketing –cum- Processing Service Security Ltd and another (1999) SC.82 it has been settled that a relief under the Industrial Dispute Act can not be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal/Labour Court dealing with the case can appropriately mould the relief claimed by the disputant. That being the settled position of law the contention and argument advanced by the learned Counsel for the Management for rejection of the statement of claim of the disputant has no substantial force.

10. The next issue comes for consideration is the relief to which the disputant entitled to . As per the claim statement she has prayed for her employment with effect from 25.6.97 i. e from the next day of her husband's discharge from service. The disputant has failed to show any circular or guide lines of the Management or its scheme in which it has been incorporated that compassionate appointment to the direct dependant of the discharged employee is to be given effect from the next day of the accidental death or permanent total disability of the employee. Rather, the NJC agreement provides that in case of accidental death or permanent total disablement of an employee in an accident arising out of and in course of employment of one of his /her direct dependant will be provided assistance. There is no other circular or guide lines of the Management or settled principles that such appointment is deemed to be effective from the date of accidental death or permanent total disablement. On the other hand, such compassionate appointment is extended on application of the dependant of the affected employee and such claim for compassionate appointment

can be countenanced only as against a specified number of vacancies arising in a year with subject to the satisfaction of the authority that the family members of the concerned employee are in distress. Further, such applicants are usually in queue and appointment is given to such applicant when his/her turn comes in the queue . The Hon'ble Apex Court have set out that the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person on compassionate ground. Since, this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the Courts /Tribunals by issuing directions for relaxation, merely on account of sympathetic considerations or hardships of the person concerned. The Courts cannot direct appointments on compassionate grounds de hors the provisions of the scheme in force governed by rules/regulations /instructions. If in a given case , the department of the Government concerned declines , as a matter of policy , not to deviate from the mandate of the provisions underlying the scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Court cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial right of parties could be held to have been proved otherwise.(The Life Insurance Corporation of India -Vrs- Smt. Asha Ramachandra Ambekar and another AIR 1994 S.C 2148). Thus, it cannot be out rightly be rejected that appointment on compassionate ground is usually taken into consideration as per the turn in the queue based on the date of such applications visa-vis availability of vacancies/ and the ceiling fixed for such appointment in a given year as well as subject to the satisfaction of the authority that the family of the workman/employee is in distress.

11. Coming to the case in hand it is claimed by the disputant that he applied for compassionate employment on 5.7.2000 vide Ext.6 which is stated to be the Xerox Copy of her application for such appointment. No other paper/document has been filed in support of the claim that the disputant applied for compassionate appointment either soon after late Mallick was discharged from service for his medical unfitness or prior to 5.7.2000. It further appears from the close scrutiny of the documents more particularly, Workman Compensation Award Ext.10, the alleged application of the disputant i.e. Ext.6, and the application submitted before the Deputy Labour Commissioner, Government of Odisha, Rourkela Ext.12 that the disputant submitted her application for compassionate appointment after award was given by the Commissioner of Workman Compensation, Rourkela and as such her such application may be presumed to date 5.7.2000 as claimed by her. She cannot be deemed to be in queue with effect from 25.4.1997 as by that time her husband was stated to be discharged from service on ground of medical unfitness arising in normal and natural course of his life. Her right for compassionate rehabilitation arose when the award was given by the Commissioner of Workmen Compensation, Rourkela vide Ext.10 wherein it was held and declared that permanent total disablement of Late Mallick resulted in an accident arising out of and in course of his employment. The award was passed on 30.3.2000. It seems from the above documents that the disputant submitted her application on 5.7.2000 after it was declared in Ext.10 that permanent total disability of late Mallick was out of an accident occurred in course of his employment. In the above facts and circumstances the disputant shall be held to be in queue for her appointment on compassionate ground w.e.f 5.7.2000.

12. For the reasons discussed above it can be safely held that the husband of the disputant suffered permanent total disablement in an accident arising out of and in course of his employment for which he was discharged from service on 25.7.1997 being found medically unfit to perform his duty. Keeping in view the provisions of the NJC Settlement/agreement,1995 a direct family member of the disputant is entitled to a compassionate appointment subject to other conditions and rules for such compassionate appointment. There is no specific pleading on behalf of the Management that the disputant is not entitled to such compassionate appointment for any other reason than her husband being suffered from permanent total disablement out of a disease arising in normal and natural course of his life. Hence, the 1st Party Management is directed to provide her employment as per her suitability to a post and subject to satisfaction of other conditions for such appointment presuming the disputant to be in queue w.e.f 5.7.2000. In case her turn in the queue is already reached she shall be given appointment against the next vacancy arising within the ceiling fixed for such compassionate appointment. In case of any delay on the part of the Management in complying the above direction within two months of the Gazette Notification of the award as a result of which the disputant attains age of superannuation and becomes ineligible for compassionate appointment, the 1st Party Management is liable to pay a compensation of Rs.10,00,000/- with 7% interest from the date of Gazette Notification of the award.

The reference is answered and the case is disposed of accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1513.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट [संदर्भ विविध संख्या 8/2012 एण्ड 38/2001, (संदर्भ संख्या 80/2012 एण्ड 18/2005)] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2019

S.O.1513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [I.D. Misc Case No. 8/2012 & 38/2001, (ID. Case No. 80/2012 & 18/2005)] of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited and their workman, which was received by the Central Government on 09.08.2019.

[No. Z-16025/4/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Preset: Sri B.C. Rath, Presiding Officer,
Central Govt. Industrial Tribunal,
Bhubaneswar.

I.D. Misc Case No. 8/2012 & I.D.Misc Cas No. 38/2001

I.D. Case No. 80/2012 & I.D. No. 18/2005

Dated, the 25th day of , June,2019

Between:-

The Management of
Steel Authority of India Ltd.
Rourkela Steel Plant, Rourkela,
Represented through
Asst. General Manager,
Blast Furnaces (Operation) …Applicant

-Versus-

Shri C.R. Murmu,
S/o. Late Liba Murmu,
Plot No.873727, Token No.702,
Designation Sr. Operative,
Department Blast Furnaces (Operation),
Qrs. No. A/295,Sector-16,
Rourkela, Dist. Sundargarh, Odisha.
Permanent address-
At/PO. Hesada, P.S. Bahalda,
Dist. Mayurbhanj, Odisha …Opposite Parties

Counsels:-

For the Applicant : Sri Subrat Mishra

For the Opposite Party : Sri B.C. Bastia

AWARD

The above noted cases are disposed of by this common award and order since the parties and the dispute relating to dismissal of the disputant workman Sri C.R. Murmu are common in both the cases.

2. Initially the I.D. Misc.Case No.38 of 2008 was registered in the State Industrial Tribunal, Rourkela on the application of Rourkela Steel Plant preferred U/s.33(2)(b) of ID Act,1947(hereinafter referred to as " the Act") for approval of its action of dismissing the O.P Workman Sri C.R.Murmu (herein after referred to as "the disputant") on account of he being held guilty of misconduct for allegedly involved in an attempt of theft and loss of property belonging to the applicant. The approval is sought since the disputant was a concerned workman in a previous dispute with the applicant in I.D.Case No.7/1997 pending disposal before the said learned Tribunal, Rourkela. I.D. Case No.18 of 2005 was registered in the learned Tribunal, Rourkela in the event of a dispute raised by the Union challenging the removal of the disputant from service with effect from 29.10.2001 and the dispute having been referred by the appropriate Government to the learned Tribunal, Rourkela for its adjudication as the conciliation between the parties failed. The term of reference is "Whether the action of the management of Rourkella Steel Plant, Rourkela by removing C.R. Murmu, Sr. Operator, Blast Furnace(Opn),Rourkela Steel Plant,PLNo.873727 from his service w.e.f.29.10.2001 is legal and/or justified. If not, what relief is entitled to ?"

3. It is to be mentioned here that when both the cases were pending for disposal in the learned Tribunal, Rourkela, the same were transferred to this Tribunal(CGIT, Bhubaneswar) keeping in view the amendment of the definition of "appropriate Government" contained U/s.2(a)(i) of the Act in the year 2010 which came into force w. e. f 15.9.2010 and the dispute being related to a Central Public Sector Undertaking is required to be decided by the CGIT, Bhubaneswar. The cases are renumbered as shown in the cause and title of the award. It is also not out of place to mention here that by the time of transfer of the cases, the fairness of departmental enquiry being a preliminary issue in I.D. Misc. Case No.38/2001 was already decided against the Management by the learned Tribunal Rourkela vide its order dated.24.10.2003 and the said Misc. Case was protracting for taking evidence of the Management in support of the alleged misconduct. Since a petition was moved by the parties for simultaneous hearing and disposal of both the cases on account of the removal of the disputant being the main issue in both the cases, this Tribunal vide its order dated.21.11.2016 directed clubbing of the I.D. Misc. Case with that of I.D. Reference Case for analogous and simultaneous hearing and disposal of the matter keeping in view that the jurisdiction of the Tribunal cannot be equated in the matter of Section 33 (2)(b) application with that of the matter U/s.10 of the Act. Since, the jurisdiction of the Tribunal is wider than that of U/s.33(2)(b) of the Act it was directed that the issues involved in both the cases would be dealt in the reference I.D. Case. The applicant Management adduced further evidence in this Tribunal to establish the misconduct of the disputant and merits of its case whereas, the disputant is also given opportunity to adduce evidence in support of his claim.

4. The undisputed facts resulting in the registration of the above noted cases are that the disputant was working as Senior Operator (Blast Furnace) in the Steel Plant by the relevant time of incident. A common charge sheet was issued against him and one B.M.Naik (Operator Crane) for misconduct of dishonesty in connection with company's property and for attempting to make willful loss to the company . Charge sheet was issued alleging that on 9.2.2000 while the disputant was deployed in PCM area of the Blast Furnace department in 'C' shift along with Sri Naik, (who was operating crane) they deliberately lip poured hot metal from ladle No.20 to the slag pot in slag car No. D/50 in PCM, instead of decanting slag from the ladle. The slag car No. D/50 was subsequently put in the track leading to the Blast Furnace slag dumping yard so that the hot metal would be disposed of as slag. But, the slag car was intercepted by an inspecting team and it was detected that 14 tones of hot metal worth of Rs.105,000/- approximately was lip poured in the slag car and attempt was being made to carry them to slag dumping yard with connivance of some other employees. The disputant was placed under suspension immediately pending initiation of departmental enquiry. Charge sheet was issued to the disputant and Sri Naik. Both of them submitted their show cause denying their involvement in the alleged attempt to theft of hot metal. As the disputant and Sri Naik agreed for a joint enquiry, the Enquiry Officer conducted a joint enquiry. On completion of enquiry the disputant and Sri Naik being found involved in an attempt of theft of property belonging to the Management were dismissed from service on 29.10.2001.

5. The case of the disputant workman as emerges from his statement of claim filed in I.D. Case No.18/2005 and his show cause in I.D Misc. Case No.38/2001 is that his suspension with effect from 10.2.2000 as well as his dismissal w.e.f.29.10.2001 is not legally sustainable in the eye of law since both the orders were not given effect by the authority having competency to pass such orders. During the departmental proceeding he was not paid subsistence allowance as admissible under the standing order of the 1st Party Management. The charges were not specific and the same are defective. The misconducts were not established from the evidence/materials led before the enquiry Officer. In the process of decantation, it is natural and possible that some hot metal might have gone to the slag pot, because the hot metal ladle was containing both slag on the upper level and hot metal on the bottom and the decantation was done purely manually on eye estimation. There was no mechanical or electronic device to separate slag and hot metal.

Therefore, it was unjust and unreasonable and improper to hold that the alleged lip poured hot metal from ladle to the slag pot was with dishonest intention so also the allegation of attempting to make willful loss of company's property by putting the slag car containing hot metal in the track leading to slag dumping yard is unfounded. He was not in charge of movement of slag car and as such he cannot be liable for the hot metal being taken to Dumping Yard. The enquiry officer as well as the enquiry committee was not duly constituted . The enquiry was not conducted in conformity to the rules/provisions of the standing order and principle of natural justice. He was not furnished with the copies of necessary documents either at the time of issue of charge sheet or at the time of commencement of enquiry. Appointment of presenting officer was not duly notified to him so also the list of witnesses and documents relied upon by the department. Witnesses to the enquiry were not examined in his presence and their statements were recorded beyond his back. Witnesses not named in the list of the presenting officer were also examined. The enquiry was conducted in a bias and unfair manner. The finding of the enquiry is perverse in as much as it is not based on the material/evidence emerged in the enquiry and evidence of the defence witnesses are not taken into consideration. The punishment of dismissal is not proportionate to the charges made against t he disputant. Hence, the disputant has claimed to declare his dismissal as illegal and unjustified and to reinstate him with back wages with all service benefits.

6. In its W.S. and the application U/s.33(2)(b) the 1st party Management Rourkella Steel Plant has refuted all the allegations of the disputant and taken a stand that in the event of interception of the slag pot at the spot , the disputant and other employees were caught red- handed in the alleged incident of attempt of theft and attempt to cause loss of company's property. They being caught in the alleged incident of dishonesty were placed under suspension, immediately. Charge sheet with specific allegations was issued to the disputant. Enquiry Officer was duly appointed and the disputant was informed about such appointment as well as the appointment of the presenting officer. He was furnished with all documents and list of witnesses relied upon by the Management to prove the misconducts. He was given due opportunity to defend himself in the departmental enquiry. The enquiry was held in accordance with the rules/provisions of the standing order as well as principle of natural justice. He was issued with 2nd show cause notice. The disputant was provided subsistence allowance as admissible to him. The finding of the enquiry officer is just and proper and it is based on the materials/evidence led before him. One month wage was paid to the disputant when dismissal order was issued to him and application U/s.33(2)(b) of the Act was moved. There being no defect in the departmental enquiry and charges of misconduct being proved the disputant was rightly dismissed from service. The punishment of dismissal was not disproportionate to the gravity of misconducts committed by the disputant. His dismissal from service on account of being involved in an attempt to commit theft of company's property cannot be interfered. Hence, prayer has been made for rejection of the statement of claim and for approval of the action of the Management in dismissing the disputant from service.

7. On the aforesaid pleadings and contentions advanced by the parties the following issues are to be taken into consideration for just and proper adjudication of the dispute.

ISSUES

1) Whether the reference made by the Government of India and the application U/s.33(2)(b) I.D Act filed by RSP are maintainable in the eye of law.

2) Whether the departmental enquiry against the 2nd party workman (Murmu) was conducted in a fair and proper manner?

3) Whether the punishment of dismissal imposed on Sri Murmu was legal and justified.

4) To what relief the disputant is entitled?

FINDINGS

8. In support of its cases the Management examined the Manager Personnel Sri Dhirendra Misra as M.W.1 and exhibited documents like Xerox copy of Charge Sheet,Xerox copy of explanation to the charge sheet,Xerox copy of notification of Enquiry, Xerox copy of Reconstitution of Enquiry Committee, Xerox copy of notice, Xerox copies of the Proceeding,Xerox copy of witness and documents,Xerox copy of written brfief(argument),Xerox copy of written brief, Xerox copy of findings,Xerox copy of forwarding letter dt.8.6.2001, Xerox copy of Personnel Policy Circular No.654 dt.21.8.1992,Xerox Copy of committee report,Xerox copy of report of P.K.Mohanty and A.Das, Xerox copy of report of S.K.Samantaray, Xerox copy of removal letter dt.29.10.2001,Xerox copies of postal receipts No.4722,4723 dt.29.10.2001 and postal A.D. Xerox copies of M.Os Receipts,Xerox copy of Appeal dt.26.11.2001. Xerox copy of P.P.Circular dt.21.9.1992, Copies of orders of Industrial Tribunal,Rourkela dt.9.10.2002 and 21.2.2008 in I.D. Misc. Case No.39/2001 which are marked as Ext.1 to 23. On the other hand the disputant examined his co-employee Sasadhar Nayak as W.W.1 and filed documents the Xerox copy of petition dt.14.6.2000 of the workman ,Xerox copy of Petition dt.14.10.2000,Xerox copy of Petition dated.10.11.2000, Xerox copy of Petition dt.24.6.2000, Xerox copy of objection dt.23.1.2001, Xerox copy of letter dt.10.2.2001, Xerox copy of Petition dt.15.2.2001, Xerox copy of

Petition dated. 24.2.2001, Xerox copy of Petition dated.7.3.2001, Xerox copy of objection petition dt.22.1.2001, Xerox copy of Petition dt.8..2.2001, Xerox copy of objection dated.30.1.2001, Xerox copy of objection dated.8.3.2001,Xerox copy of suspension order , Xerox copy of Pay Slip, Xerox copies of calculation sheet, Xerox copy of enquiry notice, Xerox copy of notice issued by E.O., Xerox copy of petition of the O.P., Xerox copy of letter dt.1.3.2001 of Sr. Manager, Xerox copy of Signature of Sri Samanta in Ext.14, marked as Ext. A to Ext. Q before the Labour Tribunal, Rourkela, on the basis of which the preliminary issue on fairness of the departmental proceeding was decided against the Management vide order dated.24.10.2003. Thereafter, the Management was called upon to give his evidence if any to prove the misconduct of the O.P. 2nd party workman pursuant to which the Management has examined three witnesses such as S.R. Suryabanshi, Asst. General Manager, Sudip Kumar Basak, Dy. General Manager, Traffic and Raw Materials and Gyanaranjan Das Asst. General Manager (M.W.2 to M.W. 4 respectively)and filed some more documents which are marked as Ext. 14 to 23 in addition to documents filed earlier to prove the misconduct of the disputant to justify its action by which the disputant was dismissed from service. The disputant has not adduced any evidence after the preliminary issue was decided in his favour except cross examining the witnesses examined by the Management. That apart he has relied upon the documents and evidence, which were adduced at the time of hearing on preliminary issue.

9. Before going to the issues involved in the dispute it is felt just and proper to mention here that in an application U/s.33(2)(b) of the Act the Industrial Tribunal has a limited scope and it is to find out whether a proper domestic enquiry in accordance with the relevant rules and standing orders and principles of natural justice has been held and whether a prima facie case for dismissal, passed on legal evidence adduced before the domestic Tribunal, is made out and lastly , whether the employer had come to a bonfide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and the dismissal was not intended to victimize the employee. Besides, it is to be seen whether the Management paid wages for one month to the dismissed workman and moved an application to the authority before whom the proceeding in previous dispute is pending for approval of its action. It is well settled that the nature of the jurisdiction exercised by the Tribunal while according approval U/s. 33(2)(b) is, therefore limited. When the Tribunal gives or refuses to give permission it does not adjudicate an Industrial Dispute. Thus Industrial Tribunal has no jurisdiction while deciding an application U/s. 33 of the Act to consider whether the punishment sought to be meted out by the employer to the workman is harassed or excessive or to substitute another punishment or to impose any condition on the employer before the requisite permission would be granted . But, the power of Industrial Court U/s.10(1)(d) read with Sec.12(5) of the Act is quite extensive and the main object of the Tribunal is adjudication of the dispute. Sec.11-A of the Act has given wider power to the Tribunal to satisfy itself whether the misconduct alleged is proved or not and even it has the power to interfere in the punishment imposed by the employer. In other words, U/s.10 of the Act the power of the Tribunal lies to differ from the Management both on a finding of misconduct arrived at as well as the punishment imposed by it. Keeping the above principles in view the issues raised in both the cases are to be dealt with to find out whether the dismissal of the disputant with effect from 29.10.2001 on account of he being held guilty of misconducts in a departmental proceeding is legal and justified and if, post facto approval can be accorded to the action of the Management by which it has dismissed the disputant.

10. Since the disputant was dismissed from service due to imposition of punishment on account of he being held guilty of serious misconduct in a departmental proceeding, it is to be seen first whether the departmental enquiry held against the disputant was conducted in a fair and proper manner i.e. in accordance to the rules or provisions of the standing order and principles of natural justice. The above issue having been answered in negative by the learned Labour Tribunal, Rourkela by its order dt.24.10.2003,there is no need of giving any further finding on the said issue of fairness of departmental proceeding. However, it cannot be over sighted that as per the settled principles of the Hon'ble Apex Court if the finding on the preliminary issue of the validity of domestic enquiry is in favour of the Management, then no additional evidence need be cited by the Management. But, if the finding on the preliminary issue is against the Management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, provided the request to adduce evidence had been made by the Management to the Tribunal during the course of the proceeding and before the trial has come to an end. The above procedure is required to be adopted in both the proceedings irrespective of the matter whether the proceeding relates to an application U/s. 33(2)(b), the Act or a proceeding by virtue of a reference U/s. 10 of the Act. In such event the Industrial Tribunal will have to find out on its own assessment of its evidence adduced before it whether there was justification for dismissal. If it, so finds, it will grant approval of order of dismissal which could relate back to the date of dismissal, provided the employer had paid or offered to pay wages for one month to the employee and the employer applied to the appropriate authority for approval of its action. In the proceeding initiated by a reference U/s.10 of the Act the Tribunal is required to give a finding if any misconduct is committed by the concerned employee as well as a finding if the punishment of dismissal is proportionate to the gravity of misconduct committed by the employee. Since, both the proceedings mentioned earlier are to be disposed of by this common award and order the Tribunal has to consider the evidence produced before it to arrive at a conclusion if any misconduct is committed by the disputant and if the misconduct is proved, the punishment of dismissal is justified for such misconduct.

11. Keeping the above principle in view it is to be seen whether the Management has adduced adequate evidence directly before this Tribunal to prove the misconduct of the disputant. Out of three witnesses examined by the Management to prove the misconduct of the disputant before this Tribunal M.W. 2 and M.W. 3 have stated that they were at the spot at the relevant time. The evidence of other witness M.W.4 is not vital since he had no direct knowledge about the alleged misconduct of the disputant and his testimony before the Tribunal is based on official records. On close examination of the oral testimony of M.W.2 and M.W.3 it is found that their presence at the spot on the relevant date is not seriously challenged by the disputant. Nothing substantial has been elicited to doubt their presence in the premises at the relevant point of time. It is the evidence of M.W.2 that he was in 'C' shift duty i.e. in between 10 P.M. to 6 A.M. on the relevant date. According to him hot metal is poured in pick casting machine. The decanting process usually poured in slag materials. Ladle No.20 was placed in the Blast Furnace along with other ladles. He noticed slag was going to the ladle No.20 After the hot metal was poured the ladle was going to SMS mixture. It is stated by him that the ladle No.20 was found in PCM area instead of going through SMS area. According to him the disputant was in charge of the PCM area and the entire operation process in PCM area was carried out on his (the disputant) instruction. Later, he came to know that hot metal along with slag was poured and taken to track leading to slag dumping yard and it was found that about 14 tones of hot metal were carried from PCM area which were intercepted by a surprise inspection team. According to him the crane operator B.N.Naik was to carry out the direction of the disputant, who was the ground man. As per the direction of the disputant hot metal was poured in the ladle and then slag pot intercepted by the inspection team. Admittedly, in his cross examination it is emerged that he was not present when hot metal was poured in ladle No.20 and then slag pot placed in the track leading to dump yard. The same does not itself exonerate the disputant from responsibility to explain as to how hot metal poured in ladle No.20 was detected and intercepted in slag pot on the track leading to dumping yard. It is not disputed as emerging from the evidence of the parties that 14 tones of hot metal were poured from ladle No.20 into slag pot which was intercepted by an inspection team while such metal was being taken out of PCM area. It is emerging from the evidence of M.W.3 that on the relevant day he being a Member of the Committee to conduct a surprise check in PCM area found hot metal poured in to slag pot with a substantial quantity. It was weighing 14 tones. According to him the disputant was in charge of PCM area when hot metal was detected in slag pot. There is nothing substantial in the cross examination of M.W.2 and M.W.3 either to disbelieve them or to infer that they had falsely implicated the disputant for any grudge. On the other hand it is not in dispute either in the departmental enquiry or before this Tribunal that the disputant was in operational charge in PCM area at the relevant time and hot metal weighing 14 tones was detected and intercepted by the surprise inspecting team while it was being taken towards slag dumping yard. That being the fact emerging from the evidence of M.W. 2 and M.W. 3 , it is the bounden responsibility of the disputant, who was in operational charge at the spot, to explain satisfactorily as to how hot metal wroth of more than Rs.100,000/- was intercepted while being taken to slag dumping yard. If the oral testimony of M.W. 2 and M.W. 3 are taken into consideration along with the testimony of M.W.4 and contents of reports like Ext. 14, 15 and 16 i.e. reports of officers entrusted with the surprise checking party, the misconduct as alleged in the charge sheet seems to have been established against the disputant. It is pertinent to mention here that law is well settled that standard of proof in domestic enquiry is not as rigid as in a criminal trial since strict rules of the Evidence Act and the standard of proof envisaged therein do not apply to a departmental proceeding or domestic Tribunal. It is open to the authority to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The standard of proof to prove the misconduct is not required to be proved beyond reasonable doubt 'but' by the pre-ponderance of probability tending to draw an inference that the fact must be more probable . If the evidence led before this Tribunal is examined and taken into consideration on the above principle not an iota of doubt is emerging to hold the disputant innocent and to exonerate him for the incident in which the hot metal was detected in slag pot found in the track leading to dump yard. Direct evidence may be wanting to prove the involvement of the disputant in the alleged attempt of theft of company's property or loss of property, but, his negligence in duty is clearly established as a result of which the hot metal worth of more than Rs.100,000/- was intercepted while being taken towards slag dumping yard. Such negligence of duty was going to cause a loss of property to the Management and such negligence is undoubtedly a grave and serious misconduct in that circumstances. Thus, on a close reading and scrutiny of the evidence of the Management led before this Tribunal along with various reports placed before the domestic enquiry as well as in this Tribunal, it can be safely held that the Management has, at least, able to prove the misconduct of negligence on the part of the disputant before this Tribunal.

12. Further, on the close scrutiny of the evidence and pleading of the parties it is seen that there is nothing substantial to suggest or to hold that the disputant was charge sheeted on the ground of any grudge or victimization.

That apart it cannot be over sighted that in the self and same matter in an application U/s. 33(2)(b) of the Act against B.M.Naik the learned Tribunal Rourkella vide its order dated.9.10.2002 arising out of I.D. Misc.Case No.39/2001 had given approval to the action of the Management in dismissing Sri Naik on account of he being found guilty of misconduct in a domestic enquiry. It is in evidence and not in dispute that Sri Naik and the disputant were charge sheeted identically in the self and same matter and in a joint departmental enquiry they were held guilty and punished. The oral evidence of M.W.4 in this regard is not seriously disputed. It is also found support from the domestic

enquiry proceeding file placed before the Tribunal. It is stated by M.W.4 that the learned Tribunal Rourkela basing on same set of documents and evidence of the joint enquiry held the enquiry as fair and proper as the enquiry has been conducted following the principle of natural justice and the Tribunal approved the action of the Management in removing Sri Naik. Be that as it may there is also no ground or reason for this Tribunal to withhold the approval of action of the Management in dismissing the disputant after he being found guilty of grave misconduct. For the reasons discussed above it can be safely said that alleged misconduct of the disputant is established before this Tribunal.

13. Now, coming to the issue of punishment imposed on the disputant it may be noted here that the disciplinary authority and on appeals , the appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The Court/Tribunal, while exercising the power of judicial review should not normally substitute its own conclusion on penalty and impose some other penalty provided the punishment imposed by the disciplinary authority or the Appellate Authority does not shock the conscience of the Court. It is well settled that the jurisdiction of the Tribunal in the matter of punishment cannot be equated with an appellate jurisdiction unless the punishment appears to be arbitrarily or whimsical or shockingly disproportionate to the gravity of misconduct. Further, parity is required to be maintained in the matter of punishment when several employees are found to be guilty of similar misconduct more particularly in the self and same matter. It is already described that one B.M. Naik, Crane Operator being held guilty of misconduct of same nature is dismissed from service. In the above backdrop no mitigating circumstance is emerging warranting the Tribunal to take a different view than the view taken by the disciplinary authority.

14. Though, pleading has been advanced by the disputant that he was not paid subsistence allowance as admissible to him, no evidence /material is placed before the Tribunal in support of such plea. In absence of any credible evidence on the part of the disputant to substantiate his pleading in this regard it is to be presumed that due subsistence allowance was being paid to him during the period of his suspension. On the other hand the Management has pleaded and advanced evidence to show that one month admissible wage was paid to the disputant at the time of issuance of his dismissal order. Further, the Management has claimed and adduced evidence that application U/s. 33(2)(b)for approval of its action was also simultaneously moved. Thus, the requirements of Section 33(2)(b) appears to have been complied with and there is no other reason to refuse approval of the action of the Management. Hence, there is no merit in the claim of the disputant so as to hold his dismissal illegal and unjustified.

Consequently the statement of claim filed in the reference In Tr. I.D. Case No. 80 of 2012 stands rejected whereas the application of the Management preferred U/s. 33(2)(b) of the Act, for approval of its action in dismissing the disputant is allowed. The order of dismissal of Sri C. R. Murmu passed by the Management is found to be legal and justified.

Accordingly the reference is answered.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का.आ. 1514.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिणी रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, एर्नाकुलम के पंचाट (संदर्भ संख्या 25/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41011/27/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of Sourthern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41011/27/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 22nd day of July 2019, 31st Asadha 1941)

ID No. 25 of 2015

Workman… The President
Dakshin Railway Employees Union
32/1547, Pallissery Road
Palarivattom
Kochi - 682025

By Adv.T.C.Govindaswamy

Management… 1. The Divisional Railway Manager
Southern Railway
Thycaud
Trivandrum

2. The Senior Divisional Commercial Manager
Southern Railway
Thycaud
Trivandrum

By Adv.Millu Dandapani

3. The Divisional Personnel Officer
Southern Railway
Thycaud
Trivandrum

This case coming up for final hearing on 31.05.2019 and this Tribunal-cum-Labour Court on 22.07.2019 passed the following.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No.L-41011/27/2015-IR(B-I) dt.13.05.2015 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of Southern Railway in enhancing the number of coaches allotted to individual ticket examiner of Trivandrum Division of Southern Railway without considering the grievance of the Dakshin Railway Employees Union is justified? If not, to what relief the Union is entitled?"

3. After receipt of reference the same was numbered and notice was issued to all the parties. The union as well as the 2nd management entered appearance. The 1st and 3rd management remained ex-parte. The union filed their claim statement. The issue involved is the revision of norms and enhancement of number of upper/sleeper class coaches to be manned by individual ticket examiners of Trivandrum Division. The proposed norms resulted in enhancement of the existing norms of 1 conductor for 3 upper class coaches to 1 conduct for 5 coaches. Similarly it is also proposed 1 TTE for 3 sleeper coaches instead of 2 coaches at present.

4. The 2nd management did not filed any written statement. The union and the management remained absent continuously on successive posting date and were declared ex-parte. The union filed an IA for setting aside the exparte order dt.27.04.2017 and the same was allowed vide order dt.21.02.2019. The union again remained absent on 04.04.2019

when the matter was posted finally for their evidence. The matter was posted to 31.05.2019 for management evidence. The management also remained absent and was declared exparte.

5. It appears that the union as well as the managements are not interested in pursuing the matter and an adjudication process which started 15.07.2015 has not proceeded any further because of the non co-operation from the side of the union as well as the management.

6. In the circumstances explained above there cannot be any adjudication of the dispute referred to this Tribunal and a "No Dispute Award " is passed in this case.

Hence a no dispute Award is passed.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Assistant, transcribed and typed by him, corrected and passed by me on this the 22nd day of July 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Nil

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कर्नाटक बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट (संदर्भ संख्या 51/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–12012/50/2009–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1515.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Bank Ltd. and their workmen, received by the Central Government on 13.08.2019.

[No. L-12012/50/2009– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 09TH JULY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 51/2009

I Party

Sh. B. N. Ashwath Narayana,
H. No./ 17/1, 22nd Cross,
Bhavaneshwari Nagar,
K.P. Agarahara,
Bangalore - 560023.

II Party

The Dy. General Manager,
The Karnataka Bank Ltd.,
Head Office,
Mahaveer Circle, Kankanady,
Mangalore - 575002.

Appearance

Advocate for I Party : Mr. S. Ramesh

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/50/2009/IR(B-I) dated 12.10.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Karnataka Bank Limited, Head Office of Mangalore, Karnataka in dismissing Sh. B.N. Ashwath Narayna, Ex-Attender from services w.e.f 07.05.2008 is legal and justified? If not, what relief the applicant is entitled to?"

1. The fact is, the 1st Party workman was appointed as an Attender in the 2nd Party on 18.12.1982, on certain allegations he was issued Charge Sheet dated 08.05.2004 was served on him and he was kept under suspension. He submitted his reply denying the charges. The Disciplinary Authority decided to hold Domestic Enquiry to probe into the charges and appointed the Enquiry Officer. On holding the enquiry, the Enquiry Officer submitted his report that, the Charges No. II (2-6) is proved and Charge No. II (1) is not proved. The Disciplinary Authority called for remarks of the 1st Party on Enquiry Report, accordingly he submitted his report. However, acting on the enquiry report the Disciplinary Authority dismissed him from service w.e.f 07.05.2008.

2. In his claim statement the 1st Party took exception to the mode, the Domestic Enquiry was held and also contends that the enquiry report is totally perverse and biased. He contends that the Management has not taken any action against the real culprits; the 2nd Party victimized him and dismissed him from service w.e.f 07.05.2008. He further contends that, his appeal before the Appellate Authority did not survive. He is not gainfully employed and struggling for survival of himself so also for his dependent family.

The 2nd Party in their counter statement have denied all the allegation made by the 1st Party and justified their actions.

3. On the rival pleadings of the Parties this Tribunal framed a Preliminary issue regarding the validity of the Domestic Enquiry held by the 2nd Party. After a full-fledged trial the issue is answered (vide order dated 16.05.2013), in the affirmative i.e., the Domestic Enquiry held against the 1st Party by the 2nd Party is fair and proper.

4. The 1st Party thereafter adduced evidence stating that he is victimized by the 2nd Party and submitted his written arguments. Reply argument is submitted by Sh. RU for the 2nd Party.

5. The allegation against the 1st Party as per the Charge Sheet was,

While working as Attender at Bangalore – Srinagar Branch

a) He fraudulently withdrew amounts of SB A/c using cheque leaves bearing postal signatures of the respective Account Holders. He has stolen the cheque books which were kept. (details of the cheque leaf number, amount withdrawn, the number and name of the SB A/c and the account holder, Date of withdrawal are detailed with the charge)

b) He stole the FD receipts, forged the signature of the depositors in the loan application, documents and deposit receipts, availed term deposit loans by pledging the receipts (four deposit loan numbers with respect of amount of loan, name of the depositor, date of loan, the term deposit pledged are mentioned alongwith the charge).

c) He produced a fake salary certificate and offered the same as surety to avail to term loan of Rs. 50,000/- by Sh. Naveen D J.

d) He attempted to cheat the Bank by transferring his vehicle which is hypothecated to the Bank during the currency of the loan availed to purchase the said four-wheeler under the staff loan scheme.

He got executed a registered sale deed dated 13.02.1981 in respect of the House property in his favour by impersonation.

During the enquiry the management examined as many as 14 witnesses and exhibited 97 documents. The 1st Party workman examined himself as a witness and produced 6 documents.

6. One of the term deposit holder namely Sh. H. S. Keshav Kumar, who was referred in the charge sheet was examined as the witness in respect of the Charge No. I (b). He stated that when he went to the Branch to get the payment of midterm deposit, he learned that deposit loans were raised on the Security Office renewed ACC No. 170386. Further, the Manager showed him the ACC receipt generated through the computer; which had signature as Sh. Keshava Kumar, but the said signature was not his signature. Likewise, he disputed the signatures on the loan application, loan documents etc., as not his signature and the handwriting in those documents is not his handwriting.

7. Another witness Smt. Shylashree MW-9/Bank Official, had deposed that, she had renewed the term deposit by making necessary entry on the reverse of the receipt, but by mistake she took out computer printout receipt of Ex. M-6

for renewal of receipt Ex M-5, she was also a staff who prepares loan documents, when the regular clerk in the loan department was on leave. She received loan application (Ex M-7) took delivery letter and the debit slips since, the clerk in the loan section was on leave she filled up the loan documents and opened the loan account, the documents sent to her were signed as Keshav Kumar. In the light of the above evidence, the Enquiry Officer held that there were dissimilarities in the signature found in the loan documents with the specimen signature of Sh. H S Keshav Kumar.

8. The Enquiry Officer further examined the joint loan documents pertaining to Sh. Shamaprasad H.S and Smt. H. Chandrika Narayan. Sh. H. Chandrashekar Udupa/Officer (MW-7) he had given statement to the Investigating Officer and admitted that, preparing the loan documents without comparing the signature of the borrower in the loan application and other loan documents, with the signature of depositor Sh. H S Shamaprasad. He deposed that CSE had informed that the depositor is sitting outside the counter, relaying the same he had filled up the loan documents. He admitted that signature in the loan documents do not tally with the signature of Sh. H.S. Shamaprasad. MW-3 the Manager, had deposed that since the loan documents duly filled, he sanctioned the loan. Sh. G. Chandrashekar the person named in the charge sheet at Sl. No. 3 pertaining to charge I(b) was examined as MW-11. Similar was the evidence stated by him and he disputed the signature found on the loan applications and also loan application form, debit slip and delivery letter. He also disputed the signatures of renewal of the term deposit receipt and stamp discharge.

9. MW-8 the Clerk of the Branch deposed that, the document filled and signed was kept on her desk; she fed the particulars of the said loan accounts into the system and sent the documents to the Manager. The then Officer MW-1, deposed that he sanctioned the loan without verifying the signature of Sh. Chandrashekar. The Enquiry Officer further observed serious discrepancies committed/overlooked at different stage of creating/sanctioning/releasing the loan amount.

10. The fourth Account Holder referred in the charge sheet Sh. Srinivas Murthy G was examined as MW-10. He disputed the signatures on the loan documents which were signed as Srinivasa Murthy. similar was the evidence as above Sh. Chayapathi MW-3/the Manager had admitted that he had written the amount Rs. 20,000/- since, the 1st Party had approached him with a set of duly signed documents stating that depositor is waiting for getting the DL facility for Rs. 20,000/- sanctioned. MW-3 admitted sanctioning DL 616 on security of deposit, he had stated that the 1st Party had represented that depositor is sitting outside the cabin, believing the same without further enquiry he sanctioned the loan. The Loan pertaining to Srinivasa Murthy was closed on 09.01.2004 by transferring the funds from Sundry Assets Suspense Account.

The other Clerical Staff namely Smt. Vanamala L Sinha had precisely corroborated the statement of MW-3, according to her the 1st Party produced the blank DL forms before her for documentation stating that the party is in urgent need of deposit loan. When she expressed her inability to attend the work, he took the paper to Smt. M B Rekha who obliged. Clerk Smt. M B Rekha MW-8 corroborated the Statement of Smt. Vanamala L Sinha.

There was ample evidence regarding the financial liabilities incurred by the 1st Party. During his cross examination also he had admitted that he owes Rs. 1,40,000/- to his creditors, he had requested the Deputy General Manager HR and IR Department to direct the Manager not to honour any cheques in his SB A/c 8767 or direct to close his SB A/c 8767 with permission to open new SB A/c, in respect of 80 cheques issued he had sought for stop payment. Relaying on this circumstantial evidence the Enquiry Officer records that, he also took interest in getting deposit loans sanctioned and recorded the finding of guilt in respect of the above allegations.

11. Regarding the allegation of producing the fake Salary Certificate while standing surety for loan sanctioned in favour of Sh. Naveen (Thyagaraja co-operative Bank), in his own letter 1st Party had admitted that he had given the relying certificate without the signature of Bank Officials. On the request of his friend one Sh. Ravi working as Attender at Thyagaraja Co-operative Bank Ltd., he had given two photos and signed on loan applications without filling up any details. An Official (MW-5) of the Thyagaraja Co-operative Bank had deposed with regard to the loan transaction so also the indulgence of the 1st Party as surety. He had produced the Salary Certificate, on demand promissory note, letter of Authority for wage deduction, irrevocable salary Authorization under section 34 of Karnataka Co-OP Societies Act.

12. The 1st Party during his cross examination admitted his signatures on these documents, though he disputes the identity of Sh. Naveen. He had also admitted in his reply to the charge sheet that the Manager had refused to sign the salary certificate and his friend had taken the said salary certificate from him; as per the terms of loan sanction, from his salary there used be deduction to which fact he had admitted. In the salary certificate he had given false information regarding his home take salary, considering the same the Enquiry Officer held that he had fabricated the Salary Certificate and stood as surety to the loan.

13. Regarding the allegation of transfer of the vehicle during the currency of the loan, the transferor of the vehicle was examined as MW-4. The documents i.e., sale receipt, RTO form 29 and form 30, authorization letter two non-judicial paper of Rs. 100/- each, letter of transfer of insurance and two cheques bearing the signature of the 1st Party were produced by him. During his cross examination 1st Party admitted his signatures on the documents. The Enquiry Officer noticed that, he had requested the Deputy General Manager vide letter dated 21.03.2005 to seize the vehicle and

appropriate the sale proceeds toward his outstanding liabilities under vehicle loan account, on that he was called upon to surrender the vehicle and to keep the same at the Branch. Instead of surrendering the vehicle, he sought instruction from Deputy General Manager HR and IR Department to stop deduction of his loan instalment from subsistence allowance paid to him, and arranged for seizure and auction of the vehicle and appropriate the sale proceeds to loan account.

14. The Enquiry Officer took note of his conduct in not surrendering the vehicle, and inferred that 1st Party is not in possession of the vehicle. Since, there is no acceptable explanation about executing RTO Forms and handling them to MW-4/Sh. Bairesh, the Enquiry Officer records that the documents were executed and given to MW-4 for transfer of the vehicle. It was the defence that the vehicle stood in the name of the 1st Party only and the vehicle loan stands cleared but, that did not convince the Enquiry Officer and he records that the 1st Party attempted to cheat the Bank.

15. Regarding the allegation that he got executed a sale deed in his favour by impersonation, though the seller was not examined as the witness through Investigating Officer the copy of the sale deed was marked in the evidence. The 1st Party did not dispute the sale transaction. The allegation was he got the sale deed by Sh. Rangappa and 2 persons impersonating as Smt. Lakshmi and Sh. Krishna (Major Children of Sh. Rangappa). Sh. Rangappa was made to believe that he mortgaged the property availed by him. A Civil Suit was filed by Sh. Rangappa and his seven children against 1st Party to avail the same. Relaying on the documentary evidence said charge is also held as proved.

16. The 1st Party has raised legal questions against the finding of the Enquiry Officer, they are:

i) The documents sought by him during the course of the enquiry were not produced before the Enquiry Officer.

ii) His education qualification is seventh standard and he was working as an Attender and cannot be held responsible in fabrication of the documents, sanctioning and disbursal of the loan in favour of fictitious persons.

iii) The loan accounts referred at Charge no. 1(b) was closed even before charge sheet was issued. The Bank has not disclosed who paid the loan alleged to have been disbursed.

iv) None of the Officers / Clerks of the Bank who pass the cheque and payments directly there by caused loss to the Bank were subjected to disciplinary action. The 2nd Party discriminated him from the other Officials who are really responsible for the fraudulent loan transaction and victimised him.

v) There was no compliant from any of the Account Holders against him. None of the witness alleged that 1st Party alone forged the signature of the account holders.

vi) The cashier of the Bank who has disbursed the loan amount to the fictious person is not examined. He was a material witness to speak about the beneficiary of the alleged loan transaction.

vii) The Loan Section Officer had admitted during the cross examination that without verifying the specimen signature of Sh. Chandrashekar, he signed the loan documents on 03.07.2003. He had also admitted that he had not produced specimen signature card of Sh. Srinivasa Murthy. G.

viii) No police complaint is lodged against him alleging fake salary certificate. He has not created fake salary certificate.

ix) Regarding the allegation of transfer of his vehicle hypothecated to the Bank in favour of 3rd Party, even now the vehicle stands in his own name and he has repaid the full loan amount.

x) Regarding the allegation of obtaining sale deed by impersonation, the Bank sanctioned the loan after taking legal opinion from their panel advocate; the Officer of the Bank was also present at the time of registration and collected all original documents of title from the vendors after registration of sale deed. The Civil suit filed by Sh. Rangappa and others is still pending. The 2nd Party has collected the entire Housing Loan amount with interest from him. Hence, no loss is caused to the Bank by the sale transaction.

17. The charge 1(a) was held not proved by the Enquiry Officer for want of supporting evidence. As regards charge 1 (b) is concerned, the 1st Party is said to have received the loan amount by stealing the term deposit receipts pertaining to four depositors and raising loans by pledging those receipts. What is established during the enquiry is, the signatures of the depositors were forged in the loan application, documents and deposit receipts. What is over looked is, the author of those forged signatures was not traced. There was no evidence to demonstrate that 1st Party received the loan amount either directly or through his Bank Account. If the 1st Party had received the amount by way of cash through the cash counter, cashier was the proper witness/eye witness to depose in this behalf; if the loan amount so raised was credited to his Bank account there ought to be documentary proof which is not brought before the Enquiry Officer. Admittedly, the charge sheet is issued subsequent to closure of the loan account as per the evidence of the 2nd Party they made good the loan account through the suspense account. During the enquiry 1st Party sought:

i) Details of the persons who deposited the amount to the suspense account.

ii) Details of the entries of the suspense account maintained in the branch.

iii) The mode of deposit of amount in the suspense account.

iv) Details of the Authority who ordered the deposit, the copy of the order from the concern person.

But these information's were not furnished which give rise to a reasonable doubt that vital evidence is suppressed by the management. For sanctioning the loan against the fixed deposit the requirements are, along with the original FD receipts loan application shall be submitted in the Branch. The sanctioning Authority shall verify the duly filled columns by the Account Holder and his signature and then sanction the loan. The sanctioned amount shall be transferred to the account of the deposit holder. The concerned Official witnesses and Manager have unequivocally admitted their omissions and lapses in sanction of the amount.

18. If really such fraudulent loan transaction took place in the Bank that would have not happened without the connivance of the concerned Bank Officials. It is surprising that except the 1st Party who is the Attender none other has faced Disciplinary Action. Despite the Enquiry Officer has noticed the irregularities and deviations on the part of the Manager and the Officer of the Bank, he has recorded his finding affirmatively on the charge 1(b) only on the basis of the superficial survey of the Management evidence. Hence, I find merit in the contention of the 1st Party that the said finding is perverse.

19. As regards charge 1(c) pertaining to production of a fake Salary Certificate is concerned, it is proved during the enquiry by the evidence of the Official of the Co-operative society that they have sanctioned term loan of Rs. 50,000/- to one Sh. Naveen T G and the 1st Party was the surety. The Salary Certificate pertaining to the 1st Party was furnished to the Bank and he authorised the Bank to deduct the instalment from his salary, he has furnished false salary particulars which is not certified by the Bank. It is the Co-operative Bank which has to be blamed if they have accepted his salary particulars as the authenticated Salary Certificate. The finding of the Enquiry Officer in recording affirmative finding to this charge cannot be found fault.

20. Regarding charge 1(d), transfer of the ownership of the vehicle which is already hypothecated to the Bank, the 1st Party continued to be the owner of the vehicle and as per B extract of the owner. However, he has signed at blank form 30, blank form no. 29, blank authorisation letter, blank sale receipt which are marked as Ex M-36 to M-39, Photostat copy of a blank non-judicial stamp paper allegedly bearing his signature is marked as Ex M-34, these documents though probablise his intention to transfer the ownership of the vehicle, the ownership is not transferred. The Bank has not suffered any financial loss from his action; he has already repaid his loan amount. The Enquiry Officer has recorded the issue has proved which is partially incorrect at the most it may be held that, he attempted to transfer the vehicle which was hypothecated to the Bank.

21. Regarding the charge 1(e), i.e., getting sale deed of the house property by impersonation. The bank sanctioned the loan after the panel advocate examined the title deeds and gave his report. The Official of the Bank was personally present at the time of registration and collected the original documents. The executants of the register sale deed are Sh. S. Rangappa and his 7 children filed the Civil Suit for setting aside the sale deed and consequential reliefs. The plaint allegation is to the effect that the sale deed was fraudulently obtained under the pretext of lending the loan amount. The Bank is arraigned as the 2nd Party in the said suit. The 1st Party has produced the certified copy of the entire order sheet; it is placed on record. Though it is a suit filed in 2004 till date the matter is pending since the issue is sub judice, the 2nd Party could not have framed a charge of impersonation against the 1st Party workman.

22. The vehicle loan and the house loan are already cleared by the 1st Party, and from none of the misconduct alleged against the 1st Party workman there is any financial implication on the Bank. What is proved during the enquiry is, he helped his friend to avail loan from the Co-operative Bank by furnishing wrong details of his salary and attempted to transfer his vehicle which was hypothecated to the Bank. The Enquiry finding is partially perverse and without proper and judicious appreciation of the evidentiary material placed before the Enquiry Officer.

23. The Punishment order of dismissal viz a viz the allegations which I have held proved during the Enquiry i.e.,

i) Furnishing false information to a Co-operative Bank

ii) Attempt to transfer hypothecated vehicle is too harsh and disproportionate.

The Bank has not suffered any loss from the misconduct alleged against the 1st Party. They have discriminated him in imposing punishment on him alone in total disregard of the involvement of others officials of the Bank who had connived for fraudulent loan transaction. Being an Attender without Educational Qualification it cannot be his hand work to prepare the false loan documents. There is no direct or indirect evidence that he alone forged the signatures of the Account Holders. Hence, the punishment order requires the exercise of Jurisdiction of this Tribunal under section 11-A of the Industrial Dispute Act to undo the illegality inflicted on the 1st Party workman by his reinstatement.

AWARD

The reference is accepted.

The order passed by the 2nd Party in No. HO/HR&IR/D/A/12004/1242/2008-09 dated 07.08.2008, thereby dismissing the 1st Party workman from service is set aside.

The 2nd Party is directed to reinstate the 1st Party workman to his original post with continuity of service and 25% of the back wages.

(Dictated to o/s L D C, transcribed by her, corrected and signed by me on 09th July, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–1, दिल्ली के पंचाट (संदर्भ संख्या 87/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–12025/01/2019–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court-1, Delhi as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 13.08.2019.

[No. L-12025/01/2019– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, NEW DELHI

ID No. 87/2014

Ms. Simran Kaur
4/243 Front Side, Subhash Nagar,
New Delhi 110027. …Workman/Claimant

Versus

ICICI Bank Limited,
Najafgarh Road Branch, New Delhi.

Also at
ICICI Bank Towers,
South Tower, West Wing,
2nd Flor, Bandra Kurla Complex,
Mumbai 400051. …Management

AWARD

This is a claim filed directly by the Workman/claimant Ms. Simran Kaur and same has been treated to be filed under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"). As per the averments made in the claim petition, the claimant after completing the process of interview and other procedural formalities, was appointed as Junior Officer by the Management vide letter dated 1/11/2011 and was posted at its Najafgarh Branch. She worked sincerely and with dedication but was completely shocked to receive a letter dated 7/3/2012 whereby the Management

unilaterally terminated her services with immediate effect on the pretext that the documents submitted by her in support of her educational qualifications were false and fake. It is pleaded that the Management has illegally terminated the services of the claimant without verifying the genuineness/authenticity of the documents, without giving her any opportunity and in violation of the principles of natural justice. The claimant got sent a demand/legal notice dated 30/11/2012 but to no response. Then she approached the Conciliation Officer but to no avail. Prayer has been made for reinstatement of the claimant with full back wages and all consequential benefits.

2. The claim petition has been resisted by the Management who filed written statement and took preliminary objections that the claim petition is not maintainable because the claimant was placed under Probation for six months as mentioned in the appointment letter dated 1/11/2011. The claimant had suppressed the material particulars and had obtained the employment on the basis of false and fabricated documents regarding her qualification which fact came to the notice of the Management during her probation period and hence services of the claimant were terminated vide letter dated 7/3/2012 It is alleged that the claimant had misled the Management by giving wrong information inasmuch as in her profile sheet dated 24/10/2011 she claimed to have done BCA from Sikkim Manipal University. According to her, she passed first year by 60%marks, second year by 55% and final year result was awaited. After selection when she was asked to submit her final year BCA Mark-sheet in the month of February, 2012, she had informed that her sixth semester examination will be held in February, 2012 and she will submit her degree only in the month of April, 2012. It is also alleged that since the claimant was not eligible for the post of Junior Officer as she was not fulfilling the qualification at the time of her appointment, the Management considered the fact and conduct of the claimant very minutely and therefore, she was ordered to be discharged from her services as per terms of her employment Prayer has been made for dismissal of the claim petition with exemplary costs.

3. On the pleadings of the parties, following issues were framed on 2/6/2015 :-

i) Whether the termination/dismissal order dated 7-3-2012, terminating services of the workman is legally null and void ?

ii) Whether the claim against the respondent is not legally maintainable as alleged ?

4) The Claimant in support of her case examined herself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/3.

5) On the other hand, the Management No.1 in order to rebut the case of the claimant examined one Ms. Neha Sharma, Chief Manager who tendered her evidence by way of affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/3.

6) I have heard Shri Sanyat Lodha, A/R for the claimant and Dr.M.Y. Khan, A/R for the Management and have lso carefully gone through the evidence adduced on record by both the parties. My findings on the above issues are as follows.

Issue No.1 and 2 :-

7) Both these issues are taken up together as they can be disposed of by common discussion.

8) From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant herein was appointed by the Management to the post of Junior Officer vide appointment letter dated 1/11/2011 (Ex.WW1/1). Prior to that , the claimant had submitted profile sheet (Ex.MW1/1) and undertaking dated 24/10/2011 (Ex.MW1/2). She joined her duties with the Management on 14/11/2011. Her services were terminated by the Management vide its letter dated 7/3/2012 (Ex.WW1/2). Thereafter, the claimant had sent demand/legal notice Ex.WW1/3.

9) Short question arises for consideration is whether the Management illegally terminated the services of the claimant or whether it was justified in the terminating the services of the claimant without giving her opportunity of hearing, on the plea that the claimant had obtained the employment on the basis of false and fabricated documents regarding her qualification which fact came to the notice of the Management during her probation period.

10) During the course of arguments, learned A/R appearing for the Management strenuously argued that dispensing services of a probationer like the claimant herein as per terms of letter of appointment does not amount to violation of principles of natural justice. In this respect, heavily placed reliance on the judgement of our own High Court in the case of **Deputy Director of Education and another Vs. Veena Sharma, 176(2010) DLT 311 (DB).** With due respect I am of the view that aforesaid judgement is of no help to the Management, inasmuch as ratio of the said decision is that the employer/Management is empowered to terminate the services of a probationer at any time when his work is not found satisfactory, whereas in the instant case the Management has not terminated the services of the claimant on the ground of unsatisfactory performance during her probation, rather it terminated the services on the plea that she had furnished false/fake document regarding her qualification.

11) Perusal of the record shows that the claimant had furnished profile sheet Ex.MW1/1, stating that she passed BCA Ist year by 60%marks, second year by 55% and final year result – awaited. This clearly shows that the claimant was not a Graduate at the time when she was offered appointment by the Management to the post of Junior Officer in November, 2011 and the claimant had clearly stated that her final year result was awaited. The claimant had not concealed any material particulars regarding her qualifications. Vide appointment letter Ex.WW1/1, the claimant was appointed on probation period six months vide appointment. It is not the case of the Management that performance of the claimant was not satisfactory during the probation period and that is why she was discharged from services, rather the Management has terminated the services of the claimant on the plea that she had furnished/submitted false and fake documents regarding her qualifications which fact came during scrutiny of the documents in February, 2012. In her cross examination the claimant WW1 has fairly admitted that she had obtained degree in BCA after her termination. The Management has failed to elucidate any reason as to why it did not verify the documents filed by the claimant regarding her qualifications, prior to issuance of appointment letter to her. As per defence of the Management and evidence of MW1, it is evident that prior to taking action, the claimant vide letter dated 9/2/2012 was asked to submit the document regarding completion of her graduation, to which she had responded vide e-mail dated 10/2/2012 (ExMW1/3) that she was required to appear in the Sixth semester examination to be held in February, 2012 and will submit the same in April, 2012. However, the Management at its wisdom immediately terminated the services of the claimant with immediate effect vide letter dated WW1/2 wherein it has been vaguely mentioned that **on verification it is now observed that document in support of your educational qualifications is found to be false/fake**. The Management had not clarified as to which of the document submitted by the claimant was fake. There is also nothing on record to suggest that prior to termination her services, the Management had given any opportunity of hearing to the claimant. Non affording of opportunity of hearing to the claimant prior to her termination amounts to violation of principle of natural justice. As such, the action of the Management in terminating the services of the claimant being against the principle of natural justice, is held to be illegal and unjustified.

12) Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages.

13) It is fairly settled that an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. To this view, I am fortified by the decision of Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324.

14- It stands proved on record that the claimant had in fact worked only for three months and 24 days, prior to her termination vide letter dated 7/3/2012 (Ex.WW1/2). There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. It has come on record that last drawn salary of the claimant was approx. Rs.15000/- per month and at that time, she was on probation. The claimant in her testimony dated 22/2/2016 admitted that she had not applied for any job after her termination; she was taking home tuitions for 1-2 children and that she has been working with Concentrix Daksh Pvt. Ltd., Gurgaon, which job she had joined last year on this date. Thus, it is evident from the testimony of claimant that the claimant was not gainfully employed prior to 2015. The Management has not led any evidence to show that the claimant was gainfully employed after her termination.

15- Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of **Haari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190** as under :-

> " Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as

mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

16) Having regard to the recent judicial trends coupled with aforesaid peculiar facts & circumstances of the case, this Tribunal is of the opinion that an amount of Rs. Two lakhs (Rupees Two Lakhs) as compensation would be just and reasonable, and the same is awarded in favour of the workman/claimant herein. In case this compensation amount is not paid by the Management within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. Award is passed accordingly in favour of the claimant and against the Management..

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/60/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/60/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 26/2013
Ref. No. L-41012/60/2012-IR(B-I) dated: 13.03.2013

BETWEEN :

Shri Mukesh Chand S/o Shri Ram Nath
Village Tikuri, Post. Daryabad
District: Barabanki

AND

1. The Divisional Railway Manager
   Northern Railway
   DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
   654, Begum ka Makbara
   Janpad Faizabad.

AWARD

1. By order No. L-41012/60/2012-IR(B-I) dated: 13.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Mukesh Chand S/o Shri Ram Nath,

Village Tikuri, Post. Daryabad, District: Barabanki and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

1. The reference under adjudication is:

2. *"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI MUKESH CHAND S/O SHRI RAM NATH W.E.F. 25.4.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"*

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 05.11.2004. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 10.10.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder on 17.05.2016, the workman abstained himself from the proceedings and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

9. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated

by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW

10th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 66/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 प्राप्त हुआ था।

[सं. एल–41012/35/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/35/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 66/2015
Ref. No. L-41012/35/2015-IR(B-I) dated: 28/30-09-2015

BETWEEN :

Shri Santosh Kumar S/o Lalu
Chillola Ajgain, Unnao, Lucknow.

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/35/2015-IR(B-I) dated: 28/30-09-2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Santosh Kumar

S/o Lalu, Chillola Ajgain, Unnao, Lucknow and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s. Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

1. The reference under adjudication is:

"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI SANTOSH PUTRA LALLU KO DINANK 25-10-2010 KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"

2. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 03.09.2005. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.10.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

3. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 2 did not file any written statement in spite of repeated notices.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. After filing of written statement on 07.06.2016, the workman abstained himself from the proceedings and neither filed any rejoinder; nor any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

7. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

8. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

9. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

10. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings

that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

11. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

12. Award as above.

LUCKNOW

10th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 61/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 प्राप्त हुआ था।

[सं. एल–41012/30/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/30/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 61/2015
Ref. No. L-41012/30/2015-IR(B-I) dated: 28/30-09-2015

BETWEEN:

Shri Duli Ram S/o Shri Pyaare Lal
Village & Post Raurkarna
District: Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/30/2015-IR(B-I) dated: 28/30-09-2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Duli Ram S/o Shri Pyaare Lal, Village & Post Raurkarna, District: Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

1. The reference under adjudication is:

> *"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI DULI RAM PUTRA PYARE LAL KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"*

2. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 09.03.2004. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 01.10.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

3. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 2 did not file any written statement in spite of repeated notices.

5. After filing of written statement on 07.06.2016, the workman abstained himself from the proceedings and neither filed any rejoinder; nor any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

6. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

7. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

8. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

9. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was

obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

10. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

11. Award as above.

LUCKNOW

11th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 64/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 प्राप्त हुआ था।

[सं. एल–41012/33/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/33/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 64/2015
Ref. No. L-41012/33/2015-IR(B-I) dated: 28/30-09-2015

BETWEEN :

Shri Vijay Shankar S/o Kalash Nath
Raukarna, Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/33/2015-IR(B-I) dated: 28/30-09-2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Vijay Shankar S/o Kalash Nath, Raukarna, Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI VIJAY KUMAR PUTRA KAILASH NATH KO DINANK 01.10-2010 KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 09.03.2004. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 01.10.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. After filing of written statement on 07.06.2016, the workman abstained himself from the proceedings and neither filed any rejoinder; nor any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

7. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

8. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

9. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

10. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated

by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

11. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

12. Award as above.

LUCKNOW

11th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1521.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 63/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/32/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/32/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 63/2015
Ref. No. L-41012/32/2015-IR(B-I) dated: 30.09.2015

BETWEEN :

Shri Ajay Kumar S/o Jagdamba parasad
R/o 412, Moti Nagar
Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/32/2015-IR(B-I) dated: 30.09.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Ajay Kumar S/o Agdamba

parasad, R/o 412, Moti Nagar, Unnao (UP)and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI AJAY KUMAR PUTRA SWA. JAGDAMBA KO DINANK 25-04-2010 KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.04.2005. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. After filing of written statement on 07.06.2016, the workman abstained himself from the proceedings and neither filed any rejoinder; nor any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

7. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

8. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

9. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

10. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

11. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

12. Award as above.

LUCKNOW

11th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 08/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/06/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/06/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 08/2015
Ref. No. L-41012/06/2015-IR(B-I) dated: 19/24-02-2015

BETWEEN :

Shri Manoj Kumar S/o Shri Baburam
Village: Kanti, Post: Haddha
District: Unnao (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/06/2015-IR(B-I) dated: 19/24-02-2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Manoj Kumar S/o Shri Baburam, Village: Kanti, Post: Haddha, District: Unnao (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI manoj kumar PUTRA SHRI rambabu KO DINANK 01.04.2010 KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 12.07.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 01.04.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the

provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. After filing of written statement on 01.10.2015, the workman abstained himself from the proceedings and neither filed any rejoinder; nor any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

7. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

8. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

9. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

10. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

11. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

12. Award as above.

LUCKNOW

11th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1523.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 06/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/04/2015–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/04/2015– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 06/2015
Ref. No. L-41012/04/2015-IR(B-I) dated: 19/24-02-2015

BETWEEN :

Shri Dilip Kumar S/o Shri Vijay Pal
Village & Post : Raukra
District: Unnao

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/04/2015-IR(B-I) dated: 19/24-02-2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Dilip Kumar S/o Shri Vijay Pal, Village & Post : Raukra, District: Unnao and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"KYA M/S SHAHID FAIZAAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SHRI DILIP KUMAR PUTRA SHRI VIJAY PAL KO DINANK 01-04-2010 KO NAUKARI SE NIKALA JANA NAYAYOCHIT EVAM VAIDH HAI? YADI NAHI TO VAADI KIS RAHAT KO PANE KA HAKDAAR HAI?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.07.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 01.04.2010 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation

of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 05.07.2016 and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW

23rd July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/67/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/67/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, PRESIDING OFFICER

I.D. No. 32/2013
Ref. No. L-41012/67/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Rajesh Kumar S/o Shri Raja Ram
Vill: Ahmedpur Khalasha
Post Jabsheli
District : Lucknow (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/67/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Rajesh Kumar S/o Shri Raja Ram, Vill: Ahmedpur Khalasha, Post Jabsheli, District : Lucknow (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S. SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI RAJESH KUMAR S/O SHRI RAJA RAM 25.09.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 25.04.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder on 09.06.2014, the workman abstained himself from the proceedings and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No. 2.

9. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW

12th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 23/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/57/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/57/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** PRESIDING OFFICER

I.D. No. 23/2013
Ref. No. L-41012/57/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Ashok Kumar S/o Shri Mangali Prasad
Vill: Harikuwar Kheda, Post: Nigaha
District : Lucknow (UP)

AND

1. The Divisional Railway Manager
   Northern Railway
   DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
   654, Begum ka Makbara
   Janpad Faizabad.

AWARD

1. By order No. L-41012/57/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Ashok Kumar S/o Shri Mangali Prasad,Vill: Harikuwar Kheda, Post: Nigaha, District : Lucknow (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s. Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

> *"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S. SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI ASHOK KUMAR S/O SHRI MANGALI PRASAD W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"*

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.09.2003. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 07.12.2016 and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

22th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 42/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/61/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/61/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR**,** PRESIDING OFFICER

I.D. No. 42/2013
Ref. No. L-41012/61/2012-IR(B-I) dated: 30.04.2013

BETWEEN :

Shri Nand Kumar Sharma S/o Shri Jata Shankar
338/04, Juhilal Colony
Kanpur (UP) – 208014

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/61/2012-IR(B-I) dated: 30.04.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Nand Kumar S/o Shri Jata Shankar, 338/04, Juhilal Colony, Kanpur (UP) – 208014 and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S. SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI NAND KUMAR SHARMA S/O JATA SHANKAR W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.09.2003. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder on 09.06.2014, the workman abstained himself from the proceedings and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No. 2.

9. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

12th July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 24/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/58/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/58/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, PRESIDING OFFICER

I.D. No. 24/2013
Ref. No. L-41012/58/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Rajesh Kumar S/o Shri Thakur Prasad
Vill. Kakori Post Kakori
District : Lucknow

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/58/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Rajesh Kumar S/o Shri Thakur Prasad, Vill. Kakori Post Kakori, District : Lucknow and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI RAJESH KUMAR S/O SHRI THAKUR PRASAD W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.01.2007. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 07.12.2016 and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No.2.

9. Heard the authorized representative of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

22nd July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2019

का. आ. 1528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2019 को प्राप्त हुआ था।

[सं. एल–41012/63/2012–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 13th August, 2019

S.O. 1528.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.08.2019.

[No. L-41012/63/2012– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT: RAKESH KUMAR**,** PRESIDING OFFICER

I.D. No. 28/2013
Ref. No. L-41012/63/2012-IR(B-I) dated: 11.03.2013

BETWEEN :

Shri Awdesh Kumar S/o Shri Raghuveer
Vill: Harikuwar Kheda, Post: Nigoha
District : Lucknow (UP)

AND

1. The Divisional Railway Manager
Northern Railway
DRM, Hajratganj, Lucknow.

2. M/s. Shahid Faizan Ahmed and Brothers
654, Begum ka Makbara
Janpad Faizabad.

AWARD

1. By order No. L-41012/63/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Awdesh Kumar S/o Shri Raghuveer,Vill: Harikuwar Kheda, Post: Nigoha, District : Lucknow (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S. SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF SHRI AWDESH KUMAR S/O SHRI RAGHUVEER W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 01.09.2003. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

4. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The opposite party No. 2 did not file any written statement in spite of repeated notices.

6. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

7. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 14.06.2016 and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

8. The authorized representative of the management of OP No. 1 argued his case; whereas none turned up from either the workman or the OP No. 2.

9. Heard the authorized representative of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

10. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

11. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

22nd July, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 16 अगस्त, 2019

का.आ. 1529.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 **का** 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भिलाई स्टील प्लांट ऑफ़ सेल के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/07/2013-एस.एस.-I]

संतोष कुमार सिंह, अवर सचिव

New Delhi, the 16th August, 2019

S.O. 1529.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of **Bhilai Steel Plant of SAIL** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of issue of notification.

2. The above exemption is subject to the following conditions namely:-

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, accountbook or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/07/2013-SS-I)]

SANTOSH KUMAR SINGH, Under Secy.

नई दिल्ली, 19 अगस्त, 2019

का.आ. 1530.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर (उ. प्र.) के पंचाट (संदर्भ सं. 59/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2019 को प्राप्त हुआ था।

[सं. एल–12011/08/2018–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th August, 2019

S.O. 1530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* KANPUR (U.P.) as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 19.08.2019.

[No. L-12011/08/2018-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Present : Sri Rakesh Kumar, HJS.

Industrial Dispute No. 59 of 2018

Between :

General Secretary,
Union Bank Employees Union,
628/M-33, Murari Nagar,
RCM Nagar,
Faizabad Road,
Lucknow. 226016

AND

Deputy General Manager,
Union Bank of India,117/H-1/240,
Pandu Nagar,
Kanpur 208005

AWARD

1. Central Government, MOL, vide notification no. L-12011/08/2018-(IR(B-II) dated 30.07.2018 has referred the following Industrial Dispute to this Tribunal for adjudication.

> "Whether the demand of the Union Bank Employees Union, U.P. that the action of management of Union Bank of India in not giving temporary transfer on medical grounds to the workman Arvind Kumar Verma, Head Cashier to Kanpur by not following the transfer policy was legal and justified? Whether the said workman is entitled to credit of medical leave which he had to take due to non transfer, If yes, what directions are necessary in the case."

2. After receipt of reference from the Mol & Employment registered notices to the Union raising present dispute were sent repeatedly but neither any one appeared from the side of the Union nor was any claim statement filed on their behalf till 09.07.19.

3. However, on 15.07.19, when the case was taken for hearing, Sri S D Mishra, General Secretary of the Union appeared and moved an application mentioning therein that the Union does not want to press the dispute any more before this Tribunal as the aggrieved workman has been provided relief in the form of placement transfer to his place of choice. Thus from the above it is evident that the demand of the Union stands satisfied and now there remains nothing to be decided in the present reference.

4. Therefore, it is concluded that since the demand of the Union stands satisfied by the management of Union Bank of India, as such it is held that the Union is not entitled for any relief pursuant to the present reference order.

5. Reference is adjudicated as above.

RAKESH KUMAR, Presiding Officer

16.07.19

नई दिल्ली, 19 अगस्त, 2019

का.आ. 1531.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 1/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2019 को प्राप्त हुआ था।

[सं. एल—12011/110/2007—आईआर (बी—II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th August, 2019

S.O. 1531.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Jaipur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 19.08.2019.

[No. L-12011/110/2007-IR(B-II)]

SEEMA BANSAL, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सी.जी.आई.टी. प्रकरण सं. 1 / 2010

राधामोहन चतुर्वेदी
पीठासीन अधिकारी

रेफरेन्स नं. L-12011/110/2007–IR(B-II) दिनांक 31/01/2008

महामन्त्री,
राजस्थान अंचल पंजाब नेशनल बैंक,
अधीनस्थ कर्मचारी संघ,
एफ—261, वैशाली नगर, जयपुर।

बनाम

1. अंचल प्रबन्धक,
पंजाब नेशनल बैंक,
अंचल कार्यालय, नेहरू प्लेस,
टोंक रोड, जयपुर।

2. शाखा प्रबन्धक,
पंजाब नेशनल बैंक,
शाखा एवरेस्ट कॉलोनी, जयपुर।

प्रार्थी की तरफ से : श्री आर.सी. जैन – प्रतिनिधि

अप्रार्थी की तरफ से : श्री प्रवीण पुरोहित –प्रतिनिधि

: **अधिनिर्णय** :

दिनांक : 17. 07. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 31.1.2008 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे आगामी चरणों में अधिनियम कहा जावेगा) की धारा 10 (2 ।) व (1) (क) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :–

> "Whether the action of management of Punjab National Bank through Zonal Manager, Jaipur in forcing the disputant workman Shti Mohanlal, President of union to join at new place on promotion vide management order dated 2-6-2007 despite the non-acceptance of the promotion order and forgo the promotion by the concerned workman and not allow him to join any where under the circumstances, is justified or not? If not, what relief the workman is entitled to?"

2. उपयुर्क्त संदर्भित विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को आहूत किया गया और प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. इस निर्देश के अनुपालन में प्रार्थी ने दिनांक 15.2.2010 को अपने दावे का अभिकथन प्रस्तुत किया। जो संक्षेप में इस प्रकार वर्णित है।

4. प्रार्थी विपक्षी के अधीन एवरेस्ट कॉलानी, जयपुर शाखा में दफ्तरी के पद पर कार्यरत है तथा प्रार्थी कर्मचारी संघ का अध्यक्ष है। विपक्षी ने दिनांक 2.6.2007 को प्रार्थी को अधीनस्थ संवर्ग से लिपिकीय संवर्ग में पदोन्नति हेतु प्रस्ताव दिया। इस प्रस्ताव के अनुसार प्रार्थी को पदोन्नति पर गुराडिया कलां में लिपिकिय/मिश्रित पदनाम के रूप में 11.6.2007 तक कार्यभार ग्रहण करने का निर्देश दिया। यदि प्रार्थी प्रस्ताव को अस्वीकार करें अथवा नियत तिथि तक कार्यग्रहण न करें तो वह पदोन्नति के लिये डिबार हो जायेगा। दिनांक 11.6.2007 तक कार्यभार ग्रहण न करने पर यह माना जायेगा कि प्रार्थी को प्रस्ताव स्वीकार नहीं है तथा पदोन्नति निरस्त समझी जावेगी। प्रार्थी ने इस पदोन्नति प्रस्ताव पर कोई सहमति नहीं दी और दिनांक 11.6.2007 तक पदोन्त स्थान पर कार्य भी ग्रहण नहीं किया। चूंकि प्रार्थी कर्मचारी संघ का अध्यक्ष है, उसे पदोन्नति पर जयपुर से बाहर पद स्थापित किया जाना अनुचित एवं अवैध है। प्रार्थी कर्मचारी संघ ने दिनांक 8.6.20007 को विपक्षीगण को हड़ताल पर जाने का नोटिस दिया। जिस पर क्षेत्रीय श्रम आयुक्त केन्द्रीय, जयपुर द्वारा समझौता वार्ता के लिये नोटिस जारी किये गये। प्रार्थी दिनांक 9.6.2007 से 12.6.2007 तक अस्वस्थता के कारण अवकाश पर था। दिनांक 13.6.2007 को जब रोग एवं आरोग्य प्रमाण पत्रों के साथ कार्य पर उपस्थित हुआ तो अप्रार्थी संख्या 2 ने उसे कार्य पर नहीं लिया। इस पर प्रार्थी ने स्पीड पोस्ट से उक्त प्रार्थना पत्र भेजा किन्तु विपक्षीगण ने उसका कोई उत्तर नहीं दिया और न हीं प्रार्थी को कार्य पर लिया। प्रार्थी द्वारा पदोन्नति हेतु स्वीकृति न देने और कार्यग्रहण दिनांक 11.6.2007 तक कार्यग्रहण न करने के कारण पदोन्नति स्वतः निरस्त हो गयी थी। इसलिये दिनांक 14.6.2007 को प्रार्थी को दफ्तरी के पद पर कार्यग्रहण करवाना चाहिये था। समझौता वार्ता के दौरान समझौता अधिकारी द्वारा दिये गये सुझाव के अनुरूप प्रार्थी ने पदोन्नति को फोरगो करने का पत्र भी विपक्षीगण को देना चाहा किन्तु नहीं लिया। दिनांक 27.9.2007 को भी प्रार्थी ने जोनल ऑफिस जयपुर में पदोन्नति को फोरगो करने का पत्र देना चाहा, तो यह कहा गया कि यह प्रार्थना पत्र बैंक को प्राप्त हो गया है। प्रार्थी को पदोन्नति का त्याग कर देने पर भी उसे पदोन्नति के स्थान पर कार्य ग्रहण करने के लिये बाध्य करना और दफ्तरी के पद पर कार्यग्रहण न करवाना अवैध एवं अनुचित हैं। इस प्रकार प्रार्थी को डयूटी पर न लिया जाना एक प्रकार से सेवामुक्ति है जो धारा 33 अधिनियम का उल्लंघन है। अतः यह घोषित किया जावें कि प्रार्थी मोहन लाल शर्मा दिनांक 13.6.2007 से निरन्तर ड्यूटि पर है तथा उक्त तिथि से पुनः ड्यूटी पर लिये जाने की तिथि तक पूर्ण वेतन व अन्य परिलाभ प्राप्त करने का अधिकारी है। यह भी घोषित किया जावे कि प्रार्थी को लिपिकीय संवर्ग में पदोन्नति दी जाने के बाद उसका जयपुर के बाहर पदस्थापन अवैध है।

5. विपक्षीगण ने प्रतिउत्तर में दावे के कथनों को अस्वीकार किया है। उनका कथन है कि संदर्भित विवाद औद्योगिक विवाद नहीं कहा जा सकता है। अधिनस्थ संवर्ग से लिपिकीय संवर्ग में पदोन्नति होने पर किसी कर्मचारी का पदस्थापन उसी क्षेत्र में सम्भव ना हो तो अंचल में ही निकटस्थ क्षेत्र में जहॉ रिक्ति हो पदस्थापित किया जाना चाहिये। प्रार्थी मोहन लाल शर्मा चूंकि लिपिकीय संवर्ग में पदोन्नत हो चुके है इसलिये अधिनस्थ कर्मचारी संघ का यह दावा पोषणीय नहीं है। विपक्षीगण को औद्योगिक विवाद का नोटिस दिनांक 12.6.2007 को प्राप्त हुआ। इसके पूर्व ही विपक्षी ने पत्र दिनांक 9.6.2007 द्वारा प्रार्थी को कार्यमुक्त कर उसे पदोन्नति स्थान पर कार्यग्रहण करने हेतु निर्देश दे दिया था। यदि प्रार्थी को पदोन्नति स्वीकार नहीं थी तो वह उसे अस्वीकार कर सकता था। प्रार्थी अब भी अनुपस्थित चल रहा है। चूंकि वह पदोन्नत हो चुका है इसलिये अधीनस्थ कर्मचारी संघ का पदाधिकारी बना रहना युक्तिसंगत नहीं है। प्रार्थी ने अपनी पदोन्नति को चुनौती नहीं दी, बल्कि पदोन्नति पर पदस्थापन के स्थान को चुनौती दी है। प्रार्थी को कार्यमुक्त कर दिये जाने के कारण उसे एवरेस्ट कॉलानी, जयपुर शाखा में कार्य पर नहीं लिया जा सकता था। अस्वस्थता का अवकाश प्रार्थना पत्र भी उसे गुराडिया कलां शाखा को प्रेषित करना चाहिये था। पदोन्नति फोरगो करने का पत्र भी 11.6.2007 से पहले ही देना था, बाद में दिये जाने से स्वीकार्य नहीं है। दफ्तरी के पद से लिपिक के रूप में पदोन्नति हो जाने से प्रार्थी के पुनः दफ्तरी नहीं बनाया जा सकता था। पदोन्नति के उपरान्त स्थानान्तरण एक सामान्य प्रकिया है इसे अनुचित श्रम अभ्यास नहीं कहा जा सकता। अतः दावा अस्वीकार किया जावें।

6. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी मोहन लाल शर्मा क शपथ पत्र प्रस्तुत किये। प्रलेखीय साक्ष्य में प्रदर्ष–डब्ल्यू 1 से 12 प्रदर्शित किये।

7. विपक्षीगण ने अपने साक्ष्य में ब्रजेन्द्र बत्रा कार्मिक प्रबन्धक को परीक्षित किया और प्रलेखीय साक्ष्य में प्रदर्श–एम 1 से एम 4 तक प्रलेख प्रदर्शित किये।

8. दिनांक 25.6.2019 एव 2.7.19 को मैनें उभयपक्ष के तर्क–वितर्क सुने तथा उपलब्ध साक्ष्य का परिशीलन किया।

9. प्रतिनिधि प्रार्थी का यह तर्क है कि प्रार्थी ने पदोन्नति प्रस्ताव पर न तो अपनी सहमति दी और न ही पदोन्नत स्थान पर 11.6.07 तक कार्यग्रहण किया। इसलिये प्रदर्ष–डब्ल्यू 1 पदोन्नति प्रस्ताव में वर्णित शर्तों के अनुसार प्रार्थी पदोन्नति हेतु डिबार हो गया एवं उसकी पदोन्नति स्वतः निरस्त हो गयी। इस स्थिति में प्रार्थी उसके मूल पद दफ्तरी के पद पर ही कार्यरत रहेगा। विपक्षी साक्षी ने अपने प्रतिपरीक्षण में यह माना है कि प्रार्थी ने प्रस्ताव पर सहमति नहीं दी तथा 11.6.07 तक पदोन्नति स्थान पर कार्यभार भी ग्रहण नहीं किया। विपक्षीगण ने प्रार्थी को 9.6.07 को कार्यमुक्त कर देना कहा है किन्तु यह कार्यमुक्ति आदेश एक कूटरचित प्रलेख है, जो प्रार्थी को कभी नहीं मिला। इसलिये प्रार्थी को कार्यमुक्त माना ही नहीं जा सकता है। प्रार्थी का नाम एवरेस्ट कॉलानी, जयपुर शाखा के उपस्थिति रजिस्टर में दफ्तरी के पद ही अंकित है और उसे अनुपस्थित दर्शाया जा रहा है, किन्तु अनुपस्थिति हेतु प्रार्थी को कोई नोटिस नही दिया गया। प्रार्थी का अवकाश प्रार्थना पत्र 8.6.07 को दिया जाना भी विपक्षी ने स्वीकार किया है। इस प्रकार न तो प्रार्थी पदोन्नत हुआ और न हीं कार्यमुक्त इसलिये उसे पूर्व पद पर कार्य पर लेना नितान्त आवश्यक और नियमानुरूप था। उन्होनें अपने तर्क के समर्थन में निम्नांकित विधिक दृष्टान्त प्रस्तुत किये :–

(1) 1993 (II) एल.एल.एन. 575 डी.के. यादव बनाम जे.एम.ए. इण्डस्ट्रीज लिमिटेड

(2) 2009 (120) एफ.एल.आर. 618 (सुप्रीम कोर्ट) नोवार्टिस इण्डिया लिमिटेड बनाम स्टेट आफ पश्चिम बंगाल व अन्य

(3) 2004 (2) डब्ल्यू.एल.सी. 549 अवध बिहारी पचौरी बनाम स्टेट ऑफ राजस्थान

(4) (2012) 3 सुप्रीम कोर्ट केसेज 178 कृष्ण कान्त बी. परमार बनाम यूनियन ऑफ इण्डिया व अन्य

10. विपक्षीगण के प्रतिनिधि ने अपनी बहस के दौरान यह कहा है कि प्रार्थी ने पदोन्नति को अस्वीकृत करने का कोई पत्र विपक्षीगण को नहीं दिया तथा 14.6.07 तक बिना सूचना अनुपस्थित रहा। प्रार्थी को 9.6.07 को पत्र जारी कर एवरेस्ट कॉलोनी, जयपुर शाखा से कार्यमुक्त कर दिया गया था। इस प्रकार प्रार्थी पदोन्नत हो गया था और उसने पदोन्नति को फोरगो भी नहीं किया था। प्रार्थी की कार्यमुक्ति के कारण उसे दफ्तरी के पद पर कार्यग्रहण करवाना सम्भव नहीं था। प्रार्थी स्वंय ने माना है कि पारिवारिक कारणों से पदोन्नति पर कार्यग्रहण नहीं कर सका। पदोन्नति पर स्थानान्तरण एक सामान्य प्रक्रिया है तथा किसी कर्मचारी का पदस्थापन विपक्षी के प्रशासनिक विवेकाधिकार के अधीन है। इसलिये यह स्पष्ट है कि प्रार्थी ने पदोन्नति प्राप्त करने के उपरान्त नवीन पद पर कार्य भार ग्रहण स्वेच्छया नहीं किया तथा गलत रूप से यह विवाद प्रस्तुत किया अतः दावा निरस्त किया जावे।

उन्होंने अपने तर्क के समर्थन में विपक्षी द्वारा निम्नांकित विधिक दृष्टान्त प्रस्तुत किये गयेः–

(1) (2011) 2 सुप्रीम कोर्ट कैसेज 212 स्टेट ऑफ उत्तर प्रदेश व अन्य बनाम माधव प्रसाद शर्मा

(2) 2011 (4) सुप्रीम कोर्ट कैसेज 545 स्टेट ऑफ उत्तर प्रदेश व अन्य बनाम जे.पी. सारस्वत

11. उभयपक्ष के तर्कों को सुनने व साक्ष्य के परिशीलन के उपरान्त निम्नलिखित विचारणीय बिन्दु उत्पन्न हुऐ हैः–

बिन्दु संख्या 1 :– क्या दिनांक 2.6.07 को विपक्षीगण द्वारा जारी पदोन्नति प्रस्ताव को प्रार्थी मोहन लाल शर्मा द्वारा स्वीकार न करने तथा पदोन्नत पद पर कार्यभार ग्रहण न करने के कारण पदोन्नति प्रस्ताव स्वतः निरस्त हो गया। इसलिये विपक्षीगण द्वारा प्रार्थी को दफ्तरी के पूर्व पद पर कार्यग्रहण करने से रोकना अनुचित एवं अवैध है ?

बिन्दु संख्या 2 : अनुतोष ?

उभयपक्ष के तर्कों एवं साक्ष्य पर मनन के उपरान्त विचारणीय बिन्दुओं पर निष्कर्ष इस प्रकार है :–

12. विचारणीय बिन्दु संख्या 1 :–

प्रार्थी ने अपनी साक्ष्य में प्रदर्ष–डब्ल्यू 1 पदोन्नति हेतु विपक्षी द्वारा जारी किया गया पत्र दिनांक 2.6.2007 को प्रदर्शित किया है। इस पत्र को विपक्षी ने भी स्वीकार किया है। इसलिये यह पत्र प्रार्थी की पदोन्नति व कार्यग्रहण के विवाद के सम्बन्ध में महत्वपूर्ण है।

13. इस पत्र में विपक्षी ने प्रार्थी को यह सुचित किया है कि उसे लिपिकीय संवर्ग में पदोन्नति हेतु अनुमोदित किया गया है तथा पदोन्नति पर गुराडिया कलां शाखा में प्रार्थी को दिनांक 11.6.2007 को कार्यग्रहण करना है। इसी पत्र में यह भी सुचित किया गया है कि

> ''यदि आप प्रस्ताव अस्वीकार करते है अथवा नियत तिथि को नई तैनाती शाखा में कार्यग्रहण नहीं करते है तो समझौता दिनांक 19.6.1991 के अनुसार लिपिकीय संवर्ग में पदोन्नति एवं स्थापन्न के लिये डिबार होगें ''

इसी पत्र के अन्तिम पैरा में यह भी लिखा गया है कि

''यह पदोन्नति प्रस्ताव अन्तिम है, यदि आप दिनांक 11.6.2007 को नये तैनाती स्थान पर कार्यग्रहण नहीं करते है तो यह माना जावेगा कि आपको उक्त प्रस्ताव मन्जुर नहीं है तथा आपकी पदोन्नति निरस्त समझी जावेगी। ''

14. यह भी स्वीकृत स्थिति है कि प्रार्थी ने दिनांक 11.6.2007 को नवीन पदोन्नति स्थान गुराडिया कलां शाखा में लिपिकीय संवर्ग में पदोन्नति पर कार्य ग्रहण नहीं किया तथा दिनांक 11.6.2007 तक पदोन्नति को स्वीकार अथवा अस्वीकार करने समबन्धी कोई सूचना विपक्षी को नहीं दी। विपक्षी के साक्षी श्री बजेन्द्र बत्रा अपनी साक्ष्य में कहते है कि मोहन लाल शर्मा ने उक्त पदोन्नति प्रस्ताव पर अपनी असहमति शाखा प्रबन्धक को निर्धारित समय सीमा में सूचित नहीं की.....उन्होनें गुराडिया कलां शाखा में रिपोर्ट नहीं किया और अभी भी वह अनुपस्थित चल रहा है। अपनी प्रतिपरीक्षा में इसी कथन को पुष्ट करते हुये साक्षी ने कहा है कि प्रार्थी ने प्रस्ताव हेतु सहमति नहीं दी, यह बात सही है और दिनांक 11.6.2007 तक गुराडिया कलां शाखा में ज्वाईन भी नहीं किया।

15. इस स्थिति में स्वंय विपक्षी द्वारा प्रेषित प्रस्ताव प्रदर्ष–डब्ल्यू 1 के अन्तिम पैरा में दिये गये निर्देश के प्रकाश में चूंकि प्रार्थी द्वारा पदोन्नति प्रस्ताव को स्वीकार नहीं किया गया तथा प्रार्थी द्वारा दिनांक 11.6.2007 तक गुराडिया कलां शाखा में पदोन्नति पर कार्यग्रहण भी नहीं किया गया '' विपक्षी पर यह मानने की बाध्यता उत्पन्न हो गयी है कि प्रार्थी को पदोन्नति प्रस्ताव स्वीकार नहीं है तथा उसकी पदोन्नति भी निरस्त हो चुकी है।

16. प्रार्थी द्वारा पदोन्नति प्रस्ताव को स्वीकार न करने तथा पदोन्नत पद पर गुराडिया कलां शाखा में कार्यग्रहण न करने की स्वभाविक निष्पत्ति यही है कि वह अपने पूर्व पद पर विपक्षी की एवरेस्ट कॉलानी, जयपुर शाखा जयपुर में दफ्तरी के पद पर ही पदस्थापित रहा।

17. विपक्षी प्रतिनिधि का यह तर्क है कि प्रार्थी को प्रदर्श–एम 2 पत्र दिनांक 9.6.07 द्वारा एवरेस्ट कॉलानी, जयपुर शाखा से अपरान्ह 2 बजे कार्यमुक्त कर दिया गया था, इसलिये प्रार्थी को दफ्तरी के पद पर कार्यग्रहण नहीं करवाया जा सकता था। इसके विपरीत प्रार्थी पक्ष का यह तर्क है कि कथित कार्यमुक्ति पत्र प्रदर्श–एम 2 विपक्षी ने न तो प्रार्थी को वितरित किया और न ही इसे कहीं भिजवाया। इस प्रकार यह कूटरचित आधार मात्र है।

18. इस सम्बन्ध में साक्ष्य का परीक्षण करने पर यह प्रकट होता है कि विपक्षी के साक्षी बजेन्द्र बत्रा ने अपनी प्रतिपरीक्षण में यह स्वीकार किया है कि प्रदर्श–एम 2 पत्र को मोहन लाल शर्मा द्वारा प्राप्त करने की कोई रसीद पेश नहीं की है। यह पत्र रजिस्टर्ड ए.डी. से उसके पते पर भेजा गया था। जिसकी ए.डी. आई थी। लेकिन साक्षी स्वीकार करता है कि रजिस्टर्ड पत्र की रसीद व ए.डी. (पावती) साक्ष्य में पेश नहीं की है। साक्षी यह भी स्वीकार करता है कि प्रदर्श–एम 2 पर प्रार्थी का कोई पता अंकित नहीं है। किस पते पर भेजा गया था यह भी ध्यान नहीं है। साक्षी कोरियर से तथा पियोन के माध्यम से भी इस पत्र को भिजवाना कहता है लेकिन तत्सम्बन्धी कोई प्रमाण प्रस्तुत नहीं किया है। विपक्षी साक्षी के इन कथनों से यह स्पष्ट हो जाता है कि विपक्षी ने प्रदर्श–एम 2 कथित कार्यमुक्ति पत्र मात्र अपने पक्ष में प्रार्थी को कार्यमुक्त कर देने का आधार उत्पन्न करने हेतु तैयार किया। इस पत्र को न तो प्रार्थी को प्रेषित किया गया और न हीं सोंपा गया। इस प्रकार इस कार्यमुक्ति आदेश के तथ्यों से प्रार्थी को किसी प्रकार संसूचित नहीं किया गया। इसलिये यह पत्र विपक्षी द्वारा प्रार्थी को एवरेस्ट कॉलानी, जयपुर शाखा से कार्यमुक्त करने का प्रमाण नहीं माना जा सकता है।

19. विपक्षी का यह आगामी तर्क है कि प्रार्थी दफ्तरी के पद से लिपिकीय संवर्ग में पदोन्नत हो चुका है इसलिये उसे यह विवाद अधीनस्थ कर्मचारी के रूप में प्रस्तुत करने का कोई अधिकार नहीं है।

20. इस सन्दर्भ में साक्ष्य के विवेचन से यह प्रमाणित हो चुका है कि प्रार्थी ने पदोन्नति प्रस्ताव को स्वीकार करते हुए नियत तिथी तक पदोन्नत पद पर कार्यग्रहण नहीं किया। इसलिये प्रार्थी की अस्वीकृती की उपधारणा करते हुए पदोन्नति निरस्त हो चुकी है। जब विपक्षी द्वारा पदोन्नति निरस्त होना (प्रदर्ष–डब्ल्यू 1 प्रत्र के अनुसार) मान लिया गया हो तो प्रार्थी को लिपिकीय संवर्ग में पदोन्नत किस प्रकार माना गया ? इस प्रश्न का कोई उत्तर विपक्षी के साक्ष्य से प्राप्त नहीं होता है। विपक्षी द्वारा प्रार्थी को पदोन्नत न मानने का प्रमाण विपक्षी के साक्षी श्री बजेन्द्र बत्रा के इस कथन से भी प्राप्त होता है कि दिनांक 9.6.2007 के बाद प्रार्थी का नाम एवरेस्ट कॉलानी, जयपुर शाखा से हटाया नहीं गया क्योंकि प्रार्थी ने स्थानान्तरित/पदोन्नत पद पर कार्य ग्रहण नहीं किया। इसलिये एवरेस्ट कॉलानी, जयपुर शाखा में प्रार्थी को अब भी अनुपस्थित अंकित किया जा रहा है। विपक्षी के इन कथनों से यह प्रमाणित होता है कि प्रार्थी की पदोन्नति निरस्त कर दिये जाने के बाद भी प्रार्थी को मात्र इस कारण पदोन्नत मानते हुए कार्यमुक्त करने का प्रयास किया गया (जो सफल नहीं हुआ) कि उसे एवरेस्ट कॉलानी, जयपुर शाखा में कार्यग्रहण नहीं करने दिया जावे।

21. प्रार्थी द्वारा दिनांक 8.6.2007 को दिनांक 9.6.2007 से दिनांक 12.6.2007 तक का अवकाश प्रार्थना पत्र विपक्षी को दिया जाना भी विपक्षी साक्षी ने स्वीकार किया है लेकिन यह कहा है कि अवकाश मन्जूर नहीं किया गया है। इसकी सूचना प्रार्थी को नहीं दी गई। विपक्षी ने माना है कि प्रार्थी का अवकाश स्वीकृत नहीं किया और न ही अस्वीकृत करने की कोई सूचना प्रार्थी को दी तथा प्रार्थी के अनुपस्थित रहने पर भी उसके विरूद्ध कोई घरेलू जांच प्रारम्भ नहीं की गई।

22. विपक्षी को क्षेत्रीय श्रम आयुक्त केन्द्रीय जयपुर द्वारा दिया गया नोटिस प्रदर्ष–डब्ल्यू 3 दिनांक 9.6.2007 को ही प्राप्त हो गया था। क्षेत्रीय श्रम आयुक्त के समक्ष समझौता कार्यवाही के दौरान दिनांक 26.9.2007 को लिखी गई नोटशीट प्रदर्ष–डब्ल्यू 9 के अनुसार प्रार्थी को जोनल आफिस में फोरगो की रिपोर्ट देने तथा इसी आधार पर विपक्षी को उसे जयपुर में दफ्तरी के पद पर पदस्थापन्न आदेश जारी करने का निर्देश, दोनो पक्षों की पूर्व इच्छा के अनुरूप क्षेत्रीय श्रम आयुक्त द्वारा दिया गया था। उन्हें दिनांक 3.10.2007 को प्रदर्श–डब्ल्यू 11 नोटशीट के अनुसार क्षेत्रीय श्रम आयुक्त ने विपक्षी को दफ्तरी के पद पर प्रार्थी के

पदस्थापन्न के सम्बन्ध में 10.10.2007 तक उत्तर देने को भी कहा किन्तु विपक्षी ने इस निर्देश को कोई पालन नहीं किया और प्रार्थी को दफ्तरी के पद पर कार्यग्रहण नहीं करवाया।

23. प्रार्थी मोहन लाल शर्मा ने अपनी साक्ष्य में यह कहा है कि दिनांक 13.6.2007 को वह रोग/आरोग्य प्रमाण पत्र लेकर ड्यूटी पर गया तो विपक्षी ने उसका प्रार्थना पत्र नहीं लिया इस पर उसने यह प्रार्थना पत्र स्पीड पोस्ट के माध्यम से भेजा तथा व्यक्तिगत रूप से भी दिया। प्रार्थी के इन कथनों का विपक्षी द्वारा प्रतिपरीक्षण के दौरान कोई खण्डन नहीं किया गया है। इसलिये यह कथन विपक्षी द्वारा स्वीकार कर लिये गये प्रमाणित होते है।

24. इस तथ्यात्मक परिदृश्य में यह स्पष्ट हो जाता है कि प्रार्थी की पदोन्नति निरस्त मान लिये जाने के कारण प्रार्थी को उसके पूर्ववर्ती पद ''दफ्तरी'' पर ही एवरेस्ट कॉलानी, जयपुर शाखा में या उक्त शाखा में संभव न रहा हो तो जयुपर स्थित अन्य किसी शाखा में पदस्थापित किया जाकर कार्यग्रहण करने देना चाहिये था। प्रार्थी को चूंकि पदोन्नत नहीं किया गया इसलिये उसे पदोन्नत स्थान के लिये कार्यमुक्त भी नहीं किया जा सकता था, यद्धपित कार्यमुक्त किया जाना प्रमाणित ही नहीं हुआ है। इसलिये विपक्षी द्वारा प्रार्थी को दफ्तरी के मूल पद पर कार्यग्रहण करने से रोकना अवैध एवं अनुचित प्रमाणित होता है। अतः यह बिन्दु इस प्रकार प्रार्थी के पक्ष में निर्णित किया जाता है।

25. <u>बिन्दु संख्या 2 अनुतोष</u> :–

बिन्दु संख्या 1 पर प्राप्त निष्कर्ष के प्रकाश में विपक्षी द्वार दफ्तरी के पद पर प्रार्थी को कार्यग्रहण न करने देना अनुचित व अवैध प्रमाणित हुआ है। इसलिये प्रार्थी को दफ्तरी के पद पर जयपुर में ही किसी शाखा अथवा कार्यालय में कार्यग्रहण करवाया जाना न्यायोचित है।

26. प्रार्थी के प्रतिनिधि ने प्रार्थी को विगत पूर्ण वेतन सहित सेवा में निरन्तरता की मांग की है तथा प्रस्तुत किये गये न्यायिक दृष्टान्तों में प्रतिपादित विधि का अवलम्ब लिया है। प्रार्थी के इस निवेदन के सन्दर्भ में प्रस्तुत विधि का परिशीलन इस प्रकार है :

डी.के. यादव बनाम जे.एम.ए. इण्डस्ट्रीज लिमिटेड के निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि स्थायी आदेश के अन्तर्गत बिना घरेलू जांच किये तथा कर्मकार को प्रतिरक्षा का अवसर दिये, की गई सेवा समाप्ति प्राकृतिक न्याय के सिद्धान्तों के विपरीत है। अर्द्धन्यायिक कृत्य एवं प्रशासनिक कृत्य की प्रकृति में प्राकृतिक न्याय की दृष्टि से कोई विभेद नहीं किया जा सकता है।

27. नोवार्टिस इण्डिया लिमिटेड बनाम स्टेट आफ वेस्ट बंगाल व अन्य के निर्णय में माननीय उच्चतम न्यायालय ने यह अभिमत व्यक्त किया है कि जब एक कर्मचारी उसके स्थानान्तरित स्थान पर विहित अवधि में कार्यग्रहण नहीं करता है तो यह दुराचारण है। ऐसे दुराचारण के लिये घरेलू जांच करते हुए कर्मचारी को प्रतिरक्षा एवं सुनवाई का अवसर दिये जाने के उपरान्त ही सेवामुक्ति की जानी चाहिये। ऐसे मामले में विगत वेतन का भुगतान प्रतिकर स्वरूप किया जाना चाहिये। प्रकरण के तथ्यों के आधार पर ही यह निर्धारित किया जाना चाहिये कि विगत पूर्ण वेतन देय है या उसका कुछ भाग दिलवाया जाना उचित है।

28. अवध बिहारी पचौरी बनाम स्टेट ऑफ राजस्थान के निर्णय में माननीय राजस्थान उच्च न्यायालय ने यह कहा है कि जब कर्मचारी पर कर्त्तव्य से अनुपस्थित रहने का आरोप हो तथा इस बिन्दु पर विचार नहीं किया गया हो कि किसी तिथि पर कर्मचारी के कार्यग्रहण को स्वीकार क्यों नहीं किया गया? रूग्णता के आधार पर अनुपस्थिति रही हो तथा चिकित्सीय साक्ष्य पर अकारण अविश्वास किया गया हो, तो स्वेच्छया अनुपस्थिति का आरोप प्रमाणित नहीं होता।

29. कृष्णकान्त बी. परमार बनाम यूनियन ऑफ इण्डिया व अन्य में माननीय सर्वोच्च न्यायालय ने जब कर्मचारी पर स्वेच्छ या अनुपस्थित रहने सम्बन्धित दुराचार का आरोप हो तो कर्मचारी की अनुपस्थिति स्वैच्छिक प्रमाणित होना अनिवार्य है। यदि अनुपस्थिति किसी अपरिहार्य अकारण से रही हो, या कर्मचारी को उपस्थिति पंजिका में उपस्थिति अंकित ही नहीं करने दी गई हो अर्थात ऐसी परिस्थिति हो कि कर्मचारी कार्यग्रहण ही नहीं कर सकता हो तो ऐसी अनुपस्थिति स्वेच्छया नहीं कही जावेगी। कर्मचारी द्वारा लम्बे समय तक (निर्णय के अनुसार 16 वर्ष) कार्य न करने को देखते हुए उसे 50 प्रतिशत विगत वेतन सहित सेवा में स्थापित किया जाना उचित माना गया।

30. विपक्षी द्वारा प्रस्तुत न्यायिक दृष्टान्त स्टेट ऑफ यू.पी. बनाम माधव प्रसाद शर्मा में माननीय सर्वोच्च न्यायालय में निर्वेतन अवकाश को दण्ड की परिभाषा में न मानते हुए दौहरे दण्ड के निवारण के सन्दर्भ में विधि प्रतिपादित की है। इसी प्रकार स्टेट ऑफ यू.पी.बनाम जे.पी. सारस्वत के निर्णय में भी माननीय उच्चतम न्यायालय ने विभागीय जांच के पश्चात पारित दण्डादेश के यथोचित होने के सम्बन्ध में अभिमत व्यक्त किया है। इस प्रकार उपर्युक्त दोनों निर्णयों में पारित विधि हस्तगत विवाद से तथ्यात्मक रूप से भिन्नता लिये हुए है अतः मैं ससम्मान इन न्यायिक दृष्टान्तों में पारित विधि को विपक्षी के तर्कों के समर्थन हेतु सहायक नहीं पाता हूँ।

31. इन न्यायिक दृष्टान्तों में प्रतिपादित विधि के प्रकाश में हस्तगत विवाद के तथ्यों व परिस्थितियों पर मनन करने से यह स्पष्ट होता है कि प्रार्थी ने साक्ष्य से दिनांक 14.6.2007 को विपक्षी के समक्ष प्रार्थना पत्र प्रदर्ष–डब्ल्यू 4 प्रस्तुत करते हुए दिनांक 13.6.2007 को रोग/आरोग्य प्रमाण पत्र सहित प्रार्थना पत्र प्रस्तुत करने व ड्यूटि पर लेने के लिये निवेदन करने के तथ्य तथा विपक्षी द्वारा प्रार्थना पत्र अकारण लेने से मना करना प्रमाणित किया है। प्रार्थी मोहन लाल शर्मा से की गई प्रतिपरीक्षा में ये तथ्य खण्डित नहीं हो सके है। विपक्षी ने साक्ष्य में यह स्वीकार भी किया है कि दिनांक 9.6.2007 से दिनांक 12.6.2007 तक अवकाश का प्रार्थना पत्र प्रार्थी दिनांक 8.6.2007 को दे गया था, किन्तु यह अवकाश स्वीकार नहीं किया गया था और प्रार्थी को इसकी सूचना भी नहीं दी गई। विपक्षी ने यह भी माना है कि दिनांक 13.6.2007 को प्रार्थी को ड्यूटि पर इसलिये नहीं लिया गया कि

उसे एवरेस्ट कॉलानी, जयपुर शाखा से कार्यमुक्त कर दिया गया था। प्रार्थी को यह लिखित निर्देश भी नहीं दिया गया कि वह गुराडिया कलां शाखा में जाकर कार्यग्रहण करें। इस परिदृश्य में यह प्रमाणित होता है कि प्रार्थी द्वारा दिनांक 13.6.2007 को कार्यग्रहण कराने का प्रार्थना पत्र देने पर भी विपक्षी ने उसे इस आधार पर कार्यग्रहण नहीं करने दिया कि उसे कथित रूप से कार्यमुक्त किया जा चुका है। जबकि तथाकथित कार्यमुक्ति पत्र प्रदर्श–एम 2 प्रार्थी को कभी दिया ही नहीं गया। विपक्षी द्वारा किसी अन्य वैकल्पिक स्थान पर कार्यग्रहण करने का निर्देश भी प्रार्थी को नहीं दिया गया। इस प्रकार प्रार्थी को किसी भी स्थान पर कार्यग्रहण नहीं करवाने या न करने देने का स्पष्ट परिणाम प्रार्थी की सेवासमाप्ति के तुल्य ही है। विधि का यह सुस्थापित सिद्धान्त है कि किसी व्यक्ति को उसकी आजीविका से वन्चित करने से पूर्व प्राकृतिक न्याय के अनुसरण में उस पर आरोपित दुराचरण की जांच करते हुए उसे सुनवाई एवं प्रतिरक्षा का युक्तियुक्त अवसर प्रदान करते हुए ही प्रतिकूल आदेश या व्यवहार किया जाना चाहिये। प्रार्थी को विपक्षी ने स्वेच्छया अनुपस्थित तो मान लिया किन्तु ऐसा मानने से पूर्व प्रार्थी के विरूद्ध कोई जांच कार्यवाही करते हुए उसका पक्ष नहीं सुना गया। प्रार्थी द्वारा कार्यग्रहण करने का निवेदन एक विपक्षी द्वारा ऐसे कारण से अस्वीकार किया गया जो कि वास्तविक न होकर बनावटी प्रमाणित हुआ। इसलिये प्रार्थी सेवा में निरन्तरता सहित सेवा में पुनर्स्थापित होने का अधिकारी है। किन्तु यह दृष्टव्य है कि प्रार्थी विगत लगभग 12 वर्ष से कार्यरत नहीं रहा है। प्रार्थी ने इस अवधि में किसी अन्य स्रोत्र से धनअर्जित न करने तथा नियोजन–विहीन रहने के सम्बन्ध में कोई अभिवचन अपने दावे के अभिकथन में नहीं किया। किन्तु दिनांक 25.8.2010 को प्रस्तुत किये गये साक्ष्य शपथ में प्रार्थी ने यह अवश्य कहा है कि वह दिनांक 13.6.2007 से बेरोजगार है। अभिवचन के अभाव में प्रस्तुत की गई साक्ष्य विधितः स्वीकार्य नहीं कही जा सकती। इसलिये माननीय सर्वोच्च न्यायालय द्वारा डी.के.यादव बनाम जे.एम.ए. इण्डस्ट्रीज लिमिटेड तथा कृष्कान्त बी. परमार बनाम यूनियन ऑफ इण्डिया के निर्णयों में प्रतिपादित विधि के अनुसरण में 50 प्रतिशत विगत वेतन एवं परिलाभों सहित दिनांक 13.6.2007 से प्रार्थी को दफ्तरी के पद पर जयपुर में किसी भी शाखा/कार्यालय में पुनः पदस्थापित करवाया जाना न्यायोचित है।

32. अतः श्रम मन्त्रालय भारत सरकार द्वारा सन्दर्भित उपर्युक्त औद्योगिक विवाद का अधिनिर्णयन इस प्रकार किया जाता है कि विपक्षीगण ने अनुचित रूप से, प्रार्थी द्वारा पदोन्नति प्रस्ताव अस्वीकृत करने तथा पदोन्नति का अभिव्यजन करने के उपरान्त भी दफ्तरी के मूल पद पर दिनांक 13.6.2007 को अवकाश से लौटने पर कार्यग्रहण नहीं करने दिया और न हीं अन्य स्थान पर पदस्थापित कर कार्यग्रहण करवाया तथा प्रार्थी को उसके वेतन–परिलाभों से वन्चित किया। इसलिये प्रार्थी पुनः जयपुर में दफ्तरी के पद पर किसी भी शाखा/कार्यालय में सेवा में निरन्तरता तथा दिनांक 13.6.2007 से 50 प्रतिशत विगत वेतन व देय परिलाभों सहित पुनः पदस्थापित होने का अधिकारी है। विपक्षीगण इस अधिनिर्णय की अनुपालना दो माह की अवधि में करें। अन्यथा प्रार्थी देय राशि पर नौ प्रतिशत वार्षिक ब्याज दर से ब्याज भी प्राप्त करने को अधिकृत होगा।

आदेश

33. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

34. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

MANOJ KUMAR VERMA Digitally signed by MANOJ KUMAR VERMA Date: 2019.09.09 19:56:26 +05'30'